''technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which hold promise of expanding or otherwise improving the advocacy functions of the State Planning Council, the functions performed by university affiliated programs and satellite centers under subchapter IV of this chapter, and protection and advocacy services relating to the State protection and advocacy system described in section 6042 of this title.''

1987—Subsec. (a). Pub. L. 100–146, §502(a)(1), (2), inserted ''and enter into contracts with'' in introductory provisions, inserted par. (1), and struck out former par. (1) which read as follows: ''demonstration projects—

''(A) which are conducted in more than one State,

''(B) which involve the participation of two or more Federal departments or agencies, or

''(C) which are otherwise of national significance,

and which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including Native Americans, Native Hawaiians, and other underserved groups); and''.

Subsec. (a)(2). Pub. L. 100–146, §502(a)(3), inserted ''the advocacy functions of the State Planning Council, the functions performed by university affiliated programs and satellite centers under subchapter IV of this chapter, and'' after ''otherwise improving''.

Subsec. (b). Pub. L. 100–146, §502(b), substituted ''in such State an opportunity'' for ''for each State in which an applicant's project will be conducted an opportunity''.

Subsecs. (c), (d). Pub. L. 100–146, §502(c), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–146 effective Oct. 1, 1987, see section 601 of Pub. L. 100–146, set out as a note under section 6000 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6083 of this title.

§ 6083. Authorization of appropriations

(a) In general

To carry out this subchapter, there are authorized to be appropriated $4,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Limitations

(1) Projects of national significance

At least 8 percent, but in no event less than $300,000, of the amounts appropriated pursuant to subsection (a) of this section shall be used to carry out the provisions of section 6082(a)(1)(B) of this title.

(2) Investigations

(A) In general

The additional authority to fund projects under section 6082(b) of this title shall not be construed as requiring the Secretary to supplant funding for other priorities described in this subchapter.

(B) Time line for funding

If amounts are available to carry out subparagraphs (A), (B), and (C) of section 6082(b)(1) of this title, the Administration shall provide funding to carry out such subparagraphs not later than May 1 of the fiscal year in which such funds become available.

(3) Programmatic reviews or other administrative activities

The Secretary may not use the funds made available under subsection (a) of this section for programmatic reviews as prescribed by regulation or other administrative activities under subchapters II, III, and IV of this chapter.

(4) Technical assistance for protection and advocacy systems

If technical assistance to improve the effectiveness of protection and advocacy systems under subchapter III of this chapter is provided under section 6042(c)(5) of this title—

(A) no funding for the provision of such technical assistance to protection and advocacy systems shall be provided under this subchapter; and

(B) the amount set aside for technical assistance under section 6082(a)(1)(B) of this title shall be proportionally reduced.

(Pub. L. 88–164, title I, §163, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2684; amended Pub. L. 100–146, title V, §503, Oct. 29, 1987, 101 Stat. 858; Pub. L. 101–496, §22, Oct. 31, 1990, 104 Stat. 1204; Pub. L. 103–230, title V, §504, Apr. 6, 1994, 108 Stat. 331.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–230, §504(a), substituted ''$4,000,000 for fiscal year 1994'' for ''$3,650,000 for fiscal year 1991'' and ''fiscal years 1995 and 1996'' for ''fiscal years 1992 and 1993''.

Subsec. (b). Pub. L. 103–230, §504(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''At least 8 percent, but not less than $300,000, of the funds appropriated pursuant to the authority of subsection (a) of this section shall be used to carry out the provisions of section 6082(a)(2) of this title.''

1990—Pub. L. 101–496 amended section generally. Prior to amendment, section read as follows:

''(a) To carry out this subchapter, there are authorized to be appropriated $3,650,000 for fiscal year 1988, $3,650,000 for fiscal year 1989, and $3,650,000 for fiscal year 1990.

''(b) Of the amounts appropriated under subsection (a) of this section for any fiscal year, $600,000 shall be available for grants and contracts under section 6082(a)(1) of this title for not more than three projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. The Secretary shall award grants and contracts under section 6082(a)(1) of this title for such projects within 6 months after October 29, 1987.''

1987—Pub. L. 100–146 amended section generally. Prior to amendment, section read as follows: ''To carry out this subchapter, there are authorized to be appropriated $2,700,000 for fiscal year 1985, $2,800,000 for fiscal year 1986, and $3,100,000 for fiscal year 1987.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–146 effective Oct. 1, 1987, see section 601 of Pub. L. 100–146, set out as a note under section 6000 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6082 of this title.

CHAPTER 76—AGE DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Sec.

CROSS REFERENCES

Age discrimination in employment, see section 621 et seq. of Title 29, Labor.

Civil rights, Federally assisted programs, see section 2000d et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 290cc–33, 300w–7, 300x–57, 708, 1437v, 1437w, 1437aaa–1, 1437aaa–2, 1760, 2000d–7, 3608, 5057, 5309, 6727, 8625, 9906, 10406, 11386, 11394, 12635, 12832, 12872, 12873, 12892, 12893, 12899b, 12899c of this title; title 20 sections 1221, 1231e, 8066; title 29 section 1577; title 31 section 6711.

§ 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

(Pub. L. 94–135, title III, § 302, Nov. 28, 1975, 89 Stat. 728; Pub. L. 95–478, title IV, § 401(a), Oct. 18, 1978, 92 Stat. 1555; Pub. L. 99–272, title XIV, § 14001(b)(4), Apr. 7, 1986, 100 Stat. 329.)

AMENDMENTS

1986—Pub. L. 99–272 struck out '', including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)'' after ''Federal financial assistance''.

1978—Pub. L. 95–478 struck out ''unreasonable'' before ''discrimination''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

SHORT TITLE

Section 301 of Pub. L. 94–135 provided that: ''The provisions of this title [enacting this chapter] may be cited as the 'Age Discrimination Act of 1975'.''

§ 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(Pub. L. 94–135, title III, § 303, Nov. 28, 1975, 89 Stat. 728.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6103, 6106a of this title.

§ 6103. Regulations

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date

(1) Not later than one year after the transmission of the report required by section 6106(b) of this title, or two and one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Services shall publish in the Federal Register proposed general regulations to carry out the provisions of section 6102 of this title.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of—

(i) the forty-five day period specified in section 6106(e) of this title; and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 6106(d) of this title, and with respect to the comments and recommendations submitted by Federal departments and agencies under section 6106(e) of this title.

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 6102 of this title, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of this title and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b) Nonviolative actions; program or activity exemption

(1) It shall not be a violation of any provision of this chapter, or of any regulation issued under this chapter, for any person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c) Employment practices and labor-management joint apprenticeship training program exemptions; Age Discrimination in Employment Act unaffected

(1) Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], nothing in this chapter shall be construed to authorize action under this chapter by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621–634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

(Pub. L. 94–135, title III, § 304, Nov. 28, 1975, 89 Stat. 729; Pub. L. 95–478, title IV, § 401(b), Oct. 18, 1978, 92 Stat. 1555; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–300, title I, § 183, Oct. 13, 1982, 96 Stat. 1357.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (c)(1), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621–634), as amended, referred to in subsec. (c)(2), is Pub. L. 90–202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§ 621 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

CODIFICATION

In subsec. (c)(1), ''Job Training Partnership Act [29 U.S.C. 1501 et seq.]'' substituted for ''Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801 et seq.), as amended'' pursuant to section 183 of the Job Training Partnership Act, Pub. L. 97–300, title I, Oct. 13, 1982, 96 Stat. 1357, which is classified to section 1592 of Title 29, Labor, and which provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act.

AMENDMENTS

1978—Subsec. (a)(4). Pub. L. 95–478, § 401(b)(1), provided that the regulations shall not become effective until approved by the Secretary.

Subsec. (a)(5). Pub. L. 95–478, § 401(b)(2), substituted ''July 1, 1979'' for ''January 1, 1979''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6102, 6104 of this title.

§ 6104. Enforcement

(a) Methods of achieving compliance with regulations

The head of any Federal department or agency who prescribes regulations under section 6103 of this title may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Limitations on termination of, or on refusal to grant or to continue, assistance; disbursement of withheld funds to achiever agencies

Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of this section shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1) of this section. Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 6103 of this title withholds funds pursuant to subsection (a) of this section, he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 6103 of this title.

(c) Advice as to failure to comply with regulation; determination that compliance cannot be secured by voluntary means

No action may be taken under subsection (a) of this section until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) Report to Congressional committees

In the case of any action taken under subsection (a) of this section, the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e) Injunctions; notice of violations; costs; conditions for actions

(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health and Human Services, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) Exhaustion of administrative remedies

With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

(Pub. L. 94–135, title III, § 305, Nov. 28, 1975, 89 Stat. 730; Pub. L. 95–478, title IV, § 401(c), (d), Oct. 18, 1978, 92 Stat. 1555, 1556; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e)(1), probably means Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 713, as amended, known as the Older Americans Amendments of 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 3001 of this title and Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–478, § 401(d), authorized disbursement of withheld funds directly to organization or agency demonstrating ability to achieve the goals of the Federal statute authorizing the program or activity while complying with the regulations.

Subsec. (e). Pub. L. 95–478, § 401(c), substituted provisions relating to injunctions, notice of violations, and costs for provision making this section the exclusive remedy for the enforcement of the provisions of this chapter.

Subsec. (f). Pub. L. 95–478, § 401(c), added subsec. (f).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (e)(1) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6105 of this title.

§ 6105. Judicial review

(a) Provisions of other laws

Any action by any Federal department or agency under section 6104 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) Provisions of chapter 7 of title 5; reviewable agency discretion

In the case of any action by any Federal department or agency under section 6104 of this title which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of title 5. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

(Pub. L. 94–135, title III, § 306, Nov. 28, 1975, 89 Stat. 730.)

§ 6106. Study of discrimination based on age

(a) Study by Commission on Civil Rights

The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance; and (2) identify with particularity any such federally assisted program or activity in which there is found evidence of persons who are otherwise qualified being, on the basis of age, excluded from participation in, denied the benefits of, or subjected to discrimination under such program or activity.

(b) Public hearings

As part of the study required by this section, the Commission shall conduct public hearings to elicit the views of interested parties, including Federal departments and agencies, on issues relating to age discrimination in programs and activities receiving Federal financial assistance, and particularly with respect to the reasonableness of distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally assisted programs.

(c) Publication of results of analyses, research and studies by independent experts; services of voluntary or uncompensated personnel

The Commission is authorized to obtain, through grant or contract, analyses, research and studies by independent experts of issues relating to age discrimination and to publish the results thereof. For purposes of the study required by this section, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 105(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(b)).

(d) Report to President and Congress; copies to affected Federal departments and agencies; information and technical assistance

Not later than two years after November 28, 1975, the Commission shall transmit a report of its findings and its recommendations for statutory changes (if any) and administrative action, including suggested general regulations, to the Congress and to the President and shall provide a copy of its report to the head of each Federal department and agency with respect to which the Commission makes findings or recommendations. The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

(e) Comments and recommendations of Federal departments and agencies; submission to President and Congressional committees

Not later than forty-five working days after receiving a copy of the report required by subsection (d) of this section, each Federal department or agency with respect to which the Commission makes findings or recommendations shall submit its comments and recommendations regarding such report to the President and to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

(f) Cooperation of Federal departments and agencies with Commission

The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study required by subsection (a) of this section, and shall provide to the Commission such data, reports, and documents in connection with the subject matter of such study as the Commission may request.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 94–135, title III, § 307, Nov. 28, 1975, 89 Stat. 731; S. Res. 4, Feb. 4, 1977; Pub. L. 95–65, § 1, July 11, 1977, 91 Stat. 269; S. Res. 30, Mar. 7, 1979.)

REFERENCES IN TEXT

Section 105(b) of the Civil Rights Act of 1957, referred to in subsec. (c), is section 105(b) of Pub. L. 85–315, pt. I, Sept. 9, 1957, 71 Stat. 636, which was classified to section 1975d(b) of this title and was omitted from the Code. For further details, see Codification note set out preceding section 1975 of this title. Similar provisions are contained in section 4(c) of the Civil Rights Commission Act of 1983, Pub. L. 98–183, Nov. 30, 1983, 97 Stat. 1304, as amended, which is classified to section 1975b(c) of this title.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95–65 substituted ''two years'' for ''eighteen months'' and authorized the Commission to provide information and technical assistance regarding its findings and recommendations to Congress, the President, and heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Human Resources of the Senate changed to Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

Committee on Labor and Public Welfare of the Senate abolished and replaced by Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4 (popularly cited as the

''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6103 of this title.

§ 6106a. Reports to the Secretary and Congress

(a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health and Human Services a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 6102 of this title; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 6102 of this title.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health and Human Services shall compile the reports made pursuant to subsection (a) of this section and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 6102 of this title.

(Pub. L. 94–135, title III, § 308, as added Pub. L. 95–478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 94–135 was renumbered section 309 and is classified to section 6107 of this title.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 6107. Definitions

For purposes of this chapter—

(1) the term ''Commission'' means the Commission on Civil Rights;

(2) the term ''Secretary'' means the Secretary of Health and Human Services;

(3) the term ''Federal department or agency'' means any agency as defined in section 551 of title 5 and includes the United States Postal Service and the Postal Rate Commission; and

(4) the term ''program or activity'' means all of the operations of—

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; or

(ii) a local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.

(Pub. L. 94–135, title III, § 309, formerly § 308, Nov. 28, 1975, 89 Stat. 731; renumbered § 309, Pub. L. 95–478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–259, § 5, Mar. 22, 1988, 102 Stat. 30; Pub. L. 103–382, title III, § 391(u), Oct. 20, 1994, 108 Stat. 4025.)

AMENDMENTS

1994—Par. (4)(B)(ii). Pub. L. 103–382 substituted ''section 8801 of title 20'' for ''section 198(a)(10), of the Elementary and Secondary Education Act of 1965''.

1988—Par. (4). Pub. L. 100–259 added par. (4).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in par. (2), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EXCLUSION FROM COVERAGE

Amendment by Pub. L. 100–259 not to be construed to extend application of Age Discrimination Act of 1975 (this chapter) to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

Amendment by Pub. L. 100–259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

CHAPTER 77—ENERGY CONSERVATION

Sec.
6201. Congressional statement of purpose.
6202. Definitions.

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

6211. Incentives to develop underground coal mines.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7135, 7194, 7521, 8255 of this title; title 15 section 719j.

§ 6201. Congressional statement of purpose

The purposes of this chapter are—

(1) to grant specific standby authority to the President, subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

(3) to increase the supply of fossil fuels in the United States, through price incentives and production requirements;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources;

(7) to provide a means for verification of energy data to assure the reliability of energy data; and

(8) to conserve water by improving the water efficiency of certain plumbing products and appliances.

(Pub. L. 94–163, § 2, Dec. 22, 1975, 89 Stat. 874; Pub. L. 102–486, title I, § 123(a), Oct. 24, 1992, 106 Stat. 2817.)

REFERENCES IN TEXT

This chapter, referred to in introductory clause, was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1992—Par. (8). Pub. L. 102–486 added par. (8).

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–406, § 1, Oct. 22, 1994, 108 Stat. 4209, provided: ''That this Act [amending sections 6251 and 6285

of this title and enacting provisions set out as a note below] may be cited as the 'Energy Policy and Conservation Act Amendments Act of 1994'.''

Pub. L. 103–406, title I, §101, Oct. 22, 1994, 108 Stat. 4209, provided that: ''This title [amending sections 6251 and 6285 of this title] may be cited as the 'Energy Policy and Conservation Act Amendments of 1994'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–440, §1, Oct. 18, 1990, 104 Stat. 1006, provided that: ''This Act [amending sections 6322, 6323, 6324 to 6326, 6371, 6371e, 6371f, 6861 to 6865, 6871, and 6872 of this title and repealing section 6327 of this title] may be cited as the 'State Energy Efficiency Programs Improvement Act of 1990'.''

Pub. L. 101–383, §1, Sept. 15, 1990, 104 Stat. 727, provided that: ''This Act [enacting sections 6249 to 6249c of this title, amending sections 6202, 6232, 6239 to 6241, 6247, 6251, and 6285 of this title, and amending provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the 'Energy Policy and Conservation Act Amendments of 1990'.''

Pub. L. 101–360, §1, Aug. 10, 1990, 104 Stat. 421, provided: ''That this Act [amending sections 6251 and 6285 of this title and provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the 'Energy Policy and Conservation Act Short-Term Extension Amendment of 1990'.''

Pub. L. 101–262, §1, Mar. 31, 1990, 104 Stat. 124, provided: ''That this Act [amending sections 6251 and 6285 of this title and provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the 'Energy Policy and Conservation Act Extension Amendment of 1990'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–494, §1, Oct. 14, 1988, 102 Stat. 2441, provided that: ''This Act [enacting sections 6374 to 6374d of this title and section 2013 of Title 15, Commerce and Trade, amending sections 2001, 2002, and 2006 of Title 15, and enacting provisions set out as notes under section 6374 of this title and sections 2006, 2013, and 2512 of Title 15] may be cited as the 'Alternative Motor Fuels Act of 1988'.''

Pub. L. 100–357, §1, June 28, 1988, 102 Stat. 671, provided that: ''This Act [amending sections 6291 to 6295 and 6297 of this title] may be referred to as the 'National Appliance Energy Conservation Amendments of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–12, §1, Mar. 17, 1987, 101 Stat. 103, provided that: ''This Act [amending sections 6291 to 6297, 6299, 6302, 6303, 6305, 6306, 6308, and 6309 of this title] may be referred to as the 'National Appliance Energy Conservation Act of 1987'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–58, §1, July 2, 1985, 99 Stat. 102, provided that: ''This Act [enacting sections 6251, 6264, 6285, and 7277 of this title, amending sections 6239, 6240, 6241, 6247, and 6272 of this title, repealing section 6401 of this title, enacting provisions set out as notes under section 7277 of this title, and amending provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the 'Energy and Conservation Amendments Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–370, §1, July 18, 1984, 98 Stat. 1211, provided: ''That this Act [enacting section 6276 of this title and a provision set out as a note under section 627] may be cited as the 'Renewable Energy Industry Development Act of 1983'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–229, §1, Aug. 3, 1982, 96 Stat. 248, provided that: ''This Act [enacting sections 6281, 6282, and 6385 of this title, amons 6239, 6240, 6247, 6271, and 6272 of this title, and enacting provisions set out as notes under sections 6234, 6240, and 6245 of this title] may be cited as the 'Energy Emergency Preparedness Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title X, §1031, Aug. 13, 1981, 95 Stat. 618, provided that: ''This subtitle [subtitle C (§§1031–1038) of title X of Pub. L. 97–35, enacting section 6247 of this title, amending sections 6240, 6245, and 6246 of this title, and enacting visions set out as notes under sections 6231, 6240, and 6247 of this title] may be cited as the 'Strategic Petroleum Reserve Amendments Act of 1981'.''

SHORT TITLE

Section 1 of Pub. L. 94–163 provided: ''That this Act [enacting this chapter and sections 757 to 760h and 2001 to 2012 of Title 15, Commerce and Trade, amending sections 753, 754, 755, 792, 796, and 1901 of Title 15 and section 2071 of the Appendix to Title 50, War and National Defense, enacting provisions set out as notes under this section, sections 753 and 796 of Title 15, and section 2071 of Title 50 App., and repealing provisions formerly set out as a note under section 1904 of Title 12, Banks and Banking] may be cited as the 'Energy Policy and Conservation Act'.''

EX. ORD. NO. 11912. DELEGATION OF AUTHORITIES

Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, as amended by Ex. Ord. No. 12003, July 20, 1977, 42 F.R. 37523; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 4323 Ex. Ord. No. 12375, Aug. 4, 1982, 47 F.R. 34105; Ex. Ord. No. 12919, §904(a)(7), June 3, 1994, 59 F.R. 29533, provided:

By virtue of the authority vested in me by the Constitution and the statutes of the United States of America, including the Energy Policy and Conservation Act (Public Law 94–163, 89 Stat. 8, 42 U.S.C. 6201 et seq.), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. (a) The Administrator of General Services is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by Section 510 of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 915, 15 U.S.C. 2010). The Administrator shall exercise that authority to ensure that passenger automobiles acquired by all Executive agencies in each fiscal year achieve a fleet average fuel economy standard that is not less than the average fuel economy standard for automobiles manufactured for the model year which includes January 1 of each fiscal year.

(b) The Administrator of General Services shall also promulgate rules which will ensure that each class of nonpassenger automobiles acquired by all Executive agencies in each fiscal year achieves a fleet average fuel economy that is not less than the average fuel economy standard for uch class, established pursuant to Section 502(b) of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 903, 15 U.S.C. 2002(b)), for the model year which includes January 1 of such fiscal year. Such rules shall not apply to nonpassenger automobiles intended for use in combat-related missions for the Armed Forces or intended for use in law enforcement work or emergency rescue work. The Administrator may provide for granting exceptions for individual nonpassenger automobiles or categories of nonpassenger automobiles as he determines to be appropriate in terms of energy conservation, economy, efficiency, or service.

(c) In performing these functions, the Administrator of General Services shall consult with the Secretary of Transportation and the Secretary of Energy.

SEC. 2. The Secretary of Commerce is designated and empowered to perform without approval, ratification,

or other action by the President, the functions vested in the President by section 103 of the Energy Policy and Conservation Act (89 Stat. 877, 42 U.S.C. 6212). In performing each of these functions, the Secretary of Commerce shall consult with appropriate Executive agencies, as set forth in the provisions of section 5(a) of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2404(a)).

SEC. 3. The Administrator of the Office of Federal Procurement Policy, in the exercise of his statutory responsibility to provide overall direction of procurement policy (41 U.S.C. 405), shall, after consultation with the heads of appropriate agencies, including those responsible for developing energy conservation and efficiency standards, and to the extent he considers appropriate and with due regard to the program activities of the Executive agencies, provide policy guidance governing the application of energy conservation and efficiency standards in the Federal procurement process in accord with section 381(a)(1) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(a)(1)).

SEC. 4. (a) The Secretary of Energy, in consultation with the heads of appropriate agencies, is hereby authorized and directed to develop for the President's consideration, in accord with section 201 of the Energy Policy and Conservation Act (89 Stat. 890, 42 U.S.C. 6261), the energy conservation and rationing contingency plans prescribed under sections 202 and 203 of the Energy Policy and Conservation Act (89 Stat. 892, 42 U.S.C. 6262 and 6263).

(b) The Secretary of Energy shall prepare, with the assistance of the heads of appropriate agencies, for the President's consideration, the annual reports provided by section 381(c) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(c)).

SEC. 5. The Secretary of State is hereby delegated the authority vested in the President by Section 252(c)(1)(A)(iii) of the Energy Policy and Conservation Act (89 Stat. 895, 42 U.S.C. 6272(c)(1)(A)(iii)).

SEC. 6. The Secretary of Energy is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by:

(a) Section 251 of the Energy Policy and Conservation Act (89 Stat. 894, 42 U.S.C. 6271), except the making of the findings provided by subparagraph (b)(1)(B) thereof; however, in performing these functions, the Secretary shall consult with the Secretary of Commerce with respect to the international allocation of petroleum products which are within the territorial jurisdiction of the United States; and *provided that* the Secretary of Commerce shall promulgate rules, pursuant to the procedures established by the Export Administration Act of 1969, as amended [50 App. U.S.C. former 2401 et seq.], to authorize the export of petroleum and petroleum products, as may be necessary for implementation of the obligations of the United States under the International Energy Program, and in accordance with the rules promulgated under Section 251 of the Energy Policy and Conservation Act by the Secretary pursuant to this subsection.

(b) Section 253(c) of the Energy Policy and Conservation Act (89 Stat. 898, 42 U.S.C. 6273);

(c) Section 254(a) of the Energy Policy and Conservation Act (89 Stat. 899, 42 U.S.C. 6274(a)), including the receipt of petitions under section 254(a)(3)(B); *provided that*, the authority under section 254(a) may be exercised only after consultation with the Secretary of State;

(d) Section 254(b) of the Energy Policy and Conservation Act (89 Stat. 900, 42 U.S.C. 6274(b)); *provided that*, in determining whether the transmittal of data would prejudice competition or violate the antitrust laws, the Secretary shall consult with the Attorney General, and in determining whether the transmittal of data would be inconsistent with national security interests, he shall consult with the Secretaries of State and Defense, and the heads of such other agencies as he deems appropriate;

(e) Section 523(a)(2)(A) of the Energy Policy and Conservation Act (89 Stat. 962, 42 U.S.C. 6393(a)(2)(A)), but only to the extent applicable to other functions delegated or assigned by this Order to the Secretary of Energy.

[SECS. 7 and 8. Revoked by Ex. Ord. No. 12919, § 904(a)(7), June 3, 1994, 59 F.R. 29533.]

SEC. 9. All orders, regulations, circulars or other directives issued and all other action taken prior to the date of this order that would be valid under the authority delegated by this Order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

SEC. 10. (a)(1) The Secretary of Energy, hereinafter referred to as the Secretary, shall develop, with the concurrence of the Director of the Office of Management and Budget, and in consultation with the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of Veterans' Affairs, the Administrator of General Services, and the heads of such other Executive agencies as he deems appropriate, the ten-year plan for energy conservation with respect to Government buildings, as provided by section 381(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6361(a)(2)).

(2) The goals established in subsection (b) shall apply to the following categories of Federally-owned buildings: (i) office buildings, (ii) hospitals, (iii) schools, (iv) prison facilities, (v) multi-family dwellings, (vi) storage facilities, and (vii) such other categories of buildings for which the Administrator determines the establishment of energy-efficiency performance goals is feasible.

(b) The Secretary shall establish requirements and procedures, which shall be observed by each agency unless a waiver is granted by the Secretary, designed to ensure that each agency to the maximum extent practicable aims to achieve the following goals:

(1) For the total of all Federally-owned existing buildings the goal shall be a reduction of 20 percent in the average annual energy use per gross square foot of floor area in 1985 from the average energy use per gross square foot of floor area in 1975. This goal shall apply to all buildings for which construction was or design specifications were completed prior to the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(2) For the total of all Federally-owned new buildings the goal shall be a reduction of 45 percent in the average annual energy requirement per gross square foot of floor area in 1985 from the average annual energy use per gross square foot of floor area in 1975. This goal shall apply to all new buildings for which design specifications are completed after the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(c) The Secretary with the concurrence of the Director of the Office of Management and Budget, in consultation with the heads of the Executive agencies specified in subsection (a) and the Director of the National Bureau of Standards, shall establish, for purposes of developing the ten-year plan, a practical and effective method for estimating and comparing life cycle capital and operating costs for Federal buildings, including residential, commercial, and industrial type categories. Such method shall be consistent with the Office of Management and Budget Circular No. A–94, and shall be adopted and used by all agencies in developing their plans pursuant to subsection (e), annual reports pursuant to subsection (g), and budget estimates pursuant to subsection (h). For purposes of this paragraph, the term ''life cycle cost'' means the total costs of owning, operating, and maintaining a building over its economic life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems. [References to National Bureau of Standards deemed to refer to National Institute of Standards and Technology pursuant to section 5115(c) of Pub. L. 100–418, set out as a Change of Name note under 15 U.S.C. 271.]

(d) Not later than November 1, 1977, the Secretary, with the concurrence of the Director of the Office of

Management and Budget, and after consultation with the Administrator of General Services and the heads of the Executive agencies specified in subsection (a) shall issue guidelines for the plans to be submitted pursuant to subsection (e).

(e)(1) The head of each Executive agency that maintains any existing building or will maintain any new building shall submit no later than six months after the issuance of guidelines pursuant to subsection (d), to the Secretary a ten-year plan designed to the maximum extent practicable to meet the goals in subsection (b) for the total of existing or new Federal buildings. Such ten-year plans shall only consider improvements that are cost-effective consistent with the criteria established by the Director of the Office of Management and Budget (OMB Circular A–94) and the method established pursuant to subsection (c) of this Section. The plan submitted shall specify appropriate energy-saving initiatives and shall estimate the expected improvements by fiscal year in terms of specific accomplishments—energy savings and cost savings—together with the estimated costs of achieving the savings.

(2) The plans submitted shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with over 30,000 gross square feet of space owned and maintained by Executive agencies. Further, the second annual report submitted under subsection (g)(2) of this Section shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with more than 5,000 but not more than 30,000 gross square feet of space. The purpose of such preliminary energy audits shall be to identify the type, size, energy use level and major energy using systems of existing Federal buildings.

(3) The Secretary shall evaluate agency plans relative to the guidelines established pursuant to subsection (d) for such plans and relative to the cost estimating method established pursuant to subsection (c). Plans determined to be deficient by the Secretary will be returned to the submitting agency head for revision and resubmission within 60 days.

(4) The head of any Executive agency submitting a plan, should he disagree with the Secretary's determination with respect to that plan, may appeal to the Director of the Office of Management and Budget for resolution of the disagreement.

(f) The head of each agency submitting a plan or revised plan determined not deficient by the Secretary or, on appeal, by the Director of the Office of Management and Budget, shall implement the plan in accord with approved budget estimates.

(g)(1) Each Executive agency shall submit to the Secretary an overall plan for conserving fuel and energy in all operations of the agency. This overall plan shall be in addition to and include any ten-year plan for energy conservation in Government buildings submitted in accord with Subsection (e).

(2) By July 1 of each year, each Executive agency shall submit a report to the Secretary on progress made toward achieving the goals established in the overall plan required by paragraph (1) of this subsection. The annual report shall include quantitative measures and accomplishment with respect to energy saving actions taken, the cost of these actions, the energy saved, the costs saved, and other benefits realized.

(3) The Secretary shall prepare a consolidated annual report on Federal government progress toward achieving the goals, including aggregate quantitative measures of accomplishment as well as suggested revisions to the ten-year plan, and submit the report to the President by August 15 of each year.

(h) Each agency required to submit a plan shall submit to the Director of the Office of Management and Budget with the agency's annual budget submission, and in accordance with procedures and requirements that the Director shall establish, estimates for implementation of the agency's plan. The Director of the Office of Management and Budget shall consult with the Secretary about the agency budget estimates.

(i) Each agency shall program its proposed energy conservation improvements of buildings so as to give the highest priority to the most cost-effective projects.

(j) No agency of the Federal government may enter into a lease or a commitment to lease a building the construction of which has not commenced by the effective date of this Order unless the building will likely meet or exceed the general goal set forth in subsection (b)(2).

(k) The provisions of this Section do not apply to housing units repossessed by the Federal Government.

EX. ORD. NO. 12759. FEDERAL ENERGY MANAGEMENT

Ex. Ord. No. 12759, Apr. 17, 1991, 56 F.R. 16257, as amended by Ex. Ord. No. 12902, § 701, Mar. 8, 1994, 59 F.R. 11471, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (Public Law 94–163, 89 Stat. 871, 42 U.S.C. 6201 *et seq.)*, the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 *et seq.)*, section 205(a) of the Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(a)), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

[SECTIONS 1 and 2. Revoked by Ex. Ord. No. 12902, § 701, Mar. 8, 1994, 59 F.R. 11471.]

SEC. 3. *Minimization of Petroleum Use in Federal Facilities*. Each agency using petroleum products for facilities operations or building purposes shall seek to minimize such use through switching to an alternative energy source if it is estimated to minimize life cycle costs and which will not violate Federal, State, or local clean air standards. In addition, each agency shall survey its buildings and facilities to determine where the potential for a dual fuel capability exists and shall provide dual fuel capability where practicable.

[SECS. 4 to 8. Revoked by Ex. Ord. No. 12902, § 701, Mar. 8, 1994, 59 F.R. 11471.]

SEC. 9. *Vehicle Fuel Efficiency Outreach Programs*. Each agency shall implement outreach programs including, but not limited to, ride sharing and employee awareness programs to reduce the petroleum fuel usage by Federal employees and by contractor employees at Government-owned, contractor-operated facilities.

SEC. 10. *Federal Vehicle Fuel Efficiency*. Consistent with its mission requirements, each agency operating 300 or more commercially designed motor vehicles domestically shall develop a plan to reduce motor vehicle gasoline and diesel consumptions by at least 10 percent by 1995 in comparison with fiscal year 1991. The Administrator of General Services, in consultation with the Secretary of Energy, shall issue appropriate guidance to assist agencies in meeting this goal. This guidance shall include guidance concerning vehicles to be covered, the use of alternative/blended fuels, initiatives to improve fuel efficiency of the existing fleet, the use of modified energy life cycle costing consistent with life cycle costing methods in 10 CFR 436, and limitations on vehicle type and engine size to be acquired. Each agency electing to use alternative fuel motor vehicles shall receive credit for such use.

[SECS. 11 to 14. Revoked by Ex. Ord. No. 12902, § 701, Mar. 8, 1994, 59 F.R. 11471.]

EX. ORD. NO. 12902. ENERGY EFFICIENCY AND WATER CONSERVATION AT FEDERAL FACILITIES

Ex. Ord. No. 12902, Mar. 8, 1994, 59 F.R. 11463, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act (Public Law 94–163, 89 Stat. 871, 42 U.S.C. 6201 *et seq.*) as amended by the Energy Policy Act of 1992 (Public Law 102–486, 106 Stat. 2776) and section 301 of title 3, United States Code, I hereby order as follows:

PART 1—DEFINITIONS

For the purposes of this order:

SECTION 101. The ''Act'' means the Federal energy management provisions of the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], as amended by the Energy Policy Act of 1992 [Pub. L. 102–486].

SEC. 102. The term ''comprehensive facility audit'' means a survey of a building or facility that provides sufficiently detailed information to allow an agency to enter into energy or water savings performance contracts or to invite inspection and bids by private upgrade specialists for direct agency-funded energy or water efficiency investments. It shall include information such as the following:

(a) the type, size, energy use, and performance of the major energy using systems and their interaction with the building envelope, the climate and weather influences, usage patterns, and related environmental concerns;

(b) appropriate energy and water conservation maintenance and operating procedures;

(c) recommendations for the acquisition and installation of energy conservation measures, including solar and other renewable energy and water conservation measures; and

(d) a strategy to implement the recommendations.

SEC. 103. The term ''cost-effective'' means providing a payback period of less than 10 years, as determined by using the methods and procedures developed pursuant to 42 U.S.C. 8254 and 10 CFR 436.

SEC. 104. The term ''demand side management'' refers to utility-sponsored programs that increase energy efficiency and water conservation or the management of demand. The term includes load management techniques.

SEC. 105. The term ''energy savings performance contracts'' means contracts that provide for the performance of services for the audit, design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations.

SEC. 106. The term ''agency'' means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

SEC. 107. The term ''Federal building'' means any individual building, structure, or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government and which consumes energy or water. In any provision of this order, the term ''Federal building'' shall also include any building leased in whole or in part for use by the Federal Government where the term of the lease exceeds 5 years and the lease does not prohibit implementation of the provision in question.

SEC. 108. The term ''Federal facility'' means any building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. In any provision of this order, the term ''Federal facility'' shall also include any building leased in whole or in part for use by the Federal Government where the term of the lease exceeds 5 years and the lease does not prohibit implementation of the provision in question.

SEC. 109. The term ''franchising'' means that an agency would provide the services of its employees to other agencies on a reimbursable basis.

SEC. 110. The term ''gainsharing'' refers to incentive systems that allocate some portion of savings resulting from gains in productivity to the workers who produce those gains.

SEC. 111. The term ''industrial facilities'' means any fixed equipment, building, or complex for the production of goods that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the hot water energy load requirements of the building.

SEC. 112. The term ''life cycle cost'' refers to life cycle cost calculated pursuant to the methodology established by 10 CFR 436.11.

SEC. 113. The term ''prioritization survey'' means a rapid assessment that will be used by an agency to identify those facilities with the highest priority projects based on the degree of cost effectiveness and to schedule comprehensive facility audits prior to project implementation. The prioritization survey shall include information such as the following:

(a) the type, size, energy and water use levels of the major energy and water using systems in place at the facility; and

(b) the need, if any, for acquisition and installation of cost-effective energy and water conservation measures, including solar and other renewable energy resource measures.

SEC. 114. The term ''shared energy savings contract'' refers to a contract under which the contractor incurs the cost of implementing energy savings measures (including, but not limited to, performing the audit, designing the project, acquiring and installing equipment, training personnel, and operating and maintaining equipment) and in exchange for providing these services, the contractor gains a share of any energy cost savings directly resulting from implementation of such measures during the term of the contract.

SEC. 115. The term ''solar and other renewable energy sources'' includes, but is not limited to, agriculture and urban waste, geothermal energy, solar energy, and wind energy.

SEC. 116. The term ''utility'' means any person, State, or agency that is engaged in the business of producing or selling electricity or engaged in the local distribution of natural gas or water to any ultimate consumer.

PART 2—INTERAGENCY COORDINATION

SEC. 201. *Interagency Coordination*. The Department of Energy (''DOE'') shall take the lead in implementing this order through the Federal Energy Management Program (''FEMP''). The Interagency Energy Policy Committee (''656 Committee'') and the Interagency Energy Management Task Force (''Task Force'') shall serve as forums to coordinate issues involved in implementing energy efficiency, water conservation, and solar and other renewable energy in the Federal sector.

PART 3—AGENCY GOALS AND REPORTING REQUIREMENTS FOR ENERGY AND WATER EFFICIENCY IN FEDERAL FACILITIES

SEC. 301. *Energy Consumption Reduction Goals*. (a) Each agency shall develop and implement a program with the intent of reducing energy consumption by 30 percent by the year 2005, based on energy consumption per-gross-square-foot of its buildings in use, to the extent that these measures are cost-effective. The 30 percent reductions shall be measured relative to the agency's 1985 energy use. Each agency's implementation program shall be designed to speed the introduction of cost-effective, energy-efficient technologies into Federal facilities, and to meet the goals and requirements of the Act and this order.

(b) Each agency shall develop and implement a program for its industrial facilities in the aggregate with the intent of increasing energy efficiency by at least 20 percent by the year 2005 as compared to the 1990 benchmark, to the extent these measures are cost-effective, and shall implement all cost-effective water conservation projects. DOE, in coordination with the 656 Committee, shall establish definitions and appropriate indicators of energy and water efficiency, and energy and water consumption and costs, in Federal industrial facilities for the purpose of establishing a base year of 1990.

SEC. 302. *Energy and Water Surveys and Audits of Federal Facilities.* (a) *Prioritization Survey.* Each agency responsible for managing Federal facilities shall conduct a prioritization survey, within 18 months of the date of this order, on each of the facilities the agency manages. The surveys shall be used to establish priorities for conducting comprehensive facility audits.

(b) *Comprehensive Facility Audits.* Each agency shall develop and begin implementing a 10-year plan to conduct or obtain comprehensive facility audits, based on prioritization surveys performed under section 302(a) of this order.

(1) Implementation of the plan shall ensure that comprehensive facility audits of approximately 10 percent of the agency's facilities are completed each year. Agencies responsible for managing less than 100 Federal facilities shall plan and execute approximately 10 comprehensive facility audits per year until all facilities have been audited.

(2) Comprehensive audits of facilities performed within the last 3 years may be considered current for the purposes of implementation.

(3) ''No-cost'' audits, such as those outlined in section 501(c) of this order, shall be utilized to the extent practicable.

(c) *Exempt Facilities.* Because the mission within facilities exempt from the energy and water reduction requirements under the Act may not allow energy efficiency and water conservation in certain operations, actions shall be taken to reduce all other energy and water waste using the procedures described in the Act and this order. Each agency shall develop and implement a plan to improve energy and water efficiency in such exempt facilities. The prioritization surveys are intended to allow agencies to refine their designation of facilities as ''exempt'' or ''industrial,'' so that only individual buildings in which industrial or energy-intensive operations are conducted remain designated as ''exempt'' or ''industrial.'' Within 21 months of the date of this order, each agency shall report to FEMP and to the Office of Management and Budget (''OMB'') the redesignations that the agency is making as a result of the prioritization surveys. Agencies may seek exemptions for their facilities pursuant to the Energy Policy and Conservation Act, as amended.

(d) *Leased Facilities.* Agencies shall conduct surveys and audits of leased facilities to the extent practicable and to the extent that the recommendations of such surveys and audits could be implemented under the terms of the lease.

SEC. 303. *Implementation of Energy Efficiency and Water Conservation Projects.* (a) *Implementation of New Audit Recommendations.* Within 1 year of the date of this order, agencies shall identify, based on preliminary recommendations from the prioritization surveys required under section 302 of this order, high priority facilities to audit and shall complete the first 10 percent of the required comprehensive facility audits. Within 180 days of the completion of the comprehensive facility audit of each facility, agencies shall begin implementing cost-effective recommendations for installation of energy efficiency, water conservation, and renewable energy technologies for that facility.

(b) *Implementation of Existing Audits.* Within 180 days of the date of this order, agencies shall begin to implement cost-effective recommendations from comprehensive audits of facilities performed within the past 3 years, for installation of energy efficiency, water conservation, and renewable energy technologies.

SEC. 304. *Solar and Other Renewable Energy.* The goal of the Federal Government is to significantly increase the use of solar and other renewable energy sources. DOE shall develop a program for achieving this goal cost-effectively and, within 210 days of the date of this order, submit the program to the 656 Committee for review. DOE shall lead the effort to assist agencies in meeting this goal.

SEC. 305. *Minimization of Petroleum-Based Fuel Use in Federal Buildings and Facilities.* All agencies shall develop and implement programs to reduce the use of petroleum in their buildings and facilities by switching to a less-polluting and nonpetroleum-based energy source, such as natural gas or solar and other renewable energy sources. Where alternative fuels are not practical or cost-effective, agencies shall strive to improve the efficiency with which they use the petroleum. Each agency shall survey its buildings and facilities that utilize petroleum-based fuel systems to determine where the potential for a dual-fuel capability exists and shall provide dual-fuel capability where cost-effective and practicable.

SEC. 306. *New Space.* (a) *New Federal Facility Construction.* Each agency involved in the construction of a new facility that is to be either owned by or leased to the Federal Government shall:

(1) design and construct such facility to minimize the life cycle cost of the facility by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies;

(2) ensure that the design and construction of facilities meet or exceed the energy performance standards applicable to Federal residential or commercial buildings as set forth in 10 CFR 435, local building standards, or a Btu-per-gross-square-foot ceiling as determined by the Task Force within 120 days of the date of this order, whichever will result in a lower life cycle cost over the life of the facility;

(3) establish and implement, within 270 days of the date of this order, a facility commissioning program that will ensure that the construction of such facilities meets the requirements outlined in this section before the facility is accepted into the Federal facility inventory; and

(4) utilize passive solar design and adopt active solar technologies where they are cost-effective.

(b) *New Leases For Existing Facilities.* To the extent practicable and permitted by law, agencies entering into leases, including the renegotiation or extension of existing leases, shall identify the energy and water consumption of those facilities and seek to incorporate provisions into each lease that minimize the cost of energy and water under a life cycle analysis, while maintaining or improving occupant health and safety. These requirements may include renovation of proposed space prior to or within the first year of each lease. Responsible agencies shall seek to negotiate the cost of the lease, taking into account the reduced energy and water costs during the term of the lease.

(c) *Government-Owned Contractor-Operated Facilities.* All Government-owned contractor-operated facilities shall comply with the goals and requirements of this order. Energy and water management goals shall be incorporated into their management contracts.

SEC. 307. *Showcase Facilities.* (a) *New Building Showcases.* When an agency constructs at least five buildings in a year, it shall designate at least one building, at the earliest stage of development, to be a showcase highlighting advanced technologies and practices for energy efficiency, water conservation, or use of solar and other renewable energy.

(b) *Demonstrations in Existing Facilities.* Each agency shall designate one of its major buildings to become a showcase to highlight energy or water efficiency and also shall attempt to incorporate cogeneration, solar and other renewable energy technologies, and indoor air quality improvements. Selection of such buildings shall be based on considerations such as the level of nonfederal visitors, historic significance, and the likelihood that visitors will learn from displays and implement similar projects. Within 180 days of the date of this order, each agency shall develop and implement plans and work in cooperation with DOE and, where appropriate, in consultation with the General Services Administration (''GSA''), the Environmental Protection Agency (''EPA''), and other appropriate agencies, to determine the most effective and cost-effective strategies to implement these demonstrations.

SEC. 308. *Annual Reporting Requirements.* (a) As required under the Act, the head of each agency shall report annually to the Secretary of Energy and OMB, in

a format specified by the Secretary and OMB after consulting with the 656 Committee. The report shall describe the agency's progress in achieving the goals of this order.

(b) The Secretary of Energy shall report to the President and the Congress annually on the implementation of this order. The report should provide information on energy and water use and cost data and shall provide the greatest level of detail practicable for buildings and facilities by energy source.

SEC. 309. *Report on Full Fuel Cycle Analysis*. DOE shall prepare a report on the issues involved in instituting life cycle analysis for Federal energy and product purchases that address the full fuel cycle costs, including issues concerning energy exploration, development, processing, transportation, storage, distribution, consumption, and disposal, and related impacts on the environment. The report shall examine methods for conducting life cycle analysis and implementing such analysis in the Federal sector and shall make appropriate recommendations. The report shall be forwarded to the President for review.

SEC. 310. *Agency Accountability*. One year after the date of this order, and every 2 years thereafter, the President's Management Council shall report to the President about efforts and actions by agencies to meet the requirements of this order. In addition, each agency head shall designate a senior official, at the Assistant Secretary level or above, to be responsible for achieving the requirements of this order and shall appoint such official to the 656 Committee. The 656 Committee shall also work to ensure the implementation of this order. The agency senior official and the 656 Committee shall coordinate implementation with the Federal Environmental Executive and Agency Environmental Executives established under Executive Order No. 12873 [42 U.S.C. 6961 note].

PART 4—USE OF INNOVATIVE FINANCING AND CONTRACTUAL MECHANISMS

SEC. 401. *Financing Mechanisms*. In addition to available appropriations, agencies shall utilize innovative financing and contractual mechanisms, including, but not limited to, utility demand side management programs, shared energy savings contracts, and energy savings performance contracts, to meet the goals and requirements of the Act and this order.

SEC. 402. *Workshop for Agencies*. Within a reasonable time of the date of this order, the Director of OMB, or his or her designee, and the Task Force shall host a workshop for agencies regarding financing and contracting for energy efficiency, water efficiency, and renewable technology projects. Based on the results of that meeting, the Administrator, Office of Procurement Policy (''OFPP''), shall assist the Administrator of General Services and the Secretary of Energy in eliminating unnecessary regulatory and procedural barriers that slow the utilization of such audit, financing, and contractual mechanisms or complicate their use. All actions that are cost-effective shall be implemented through the process required in section 403 of this order.

SEC. 403. *Elimination of Barriers*. Agency heads shall work with their procurement officials to identify and eliminate internal regulations, procedures, or other barriers to implementation of the Act and this order. DOE shall develop a model set of recommendations that will be forwarded to the Administrator of OFPP in order to assist agencies in eliminating the identified barriers.

PART 5—TECHNICAL ASSISTANCE, INCENTIVES, AND AWARENESS

SEC. 501. *Technical Assistance*. (a) To assist Federal energy managers in implementing energy efficiency and water conservation projects, DOE shall, within 180 days of the date of this order, develop and make available through the Task Force:

(1) guidance explaining the relationship between water use and energy consumption and the energy savings achieved through water conservation measures;

(2) a model solicitation and implementation guide for innovative funding mechanisms referenced in section 401 of this order;

(3) a national list of companies providing water services in addition to the list of qualified energy service companies as required by the Act;

(4) the capabilities and technologies available through the national energy laboratories; and

(5) an annually-updated guidance manual for Federal energy managers that includes, at a minimum, new sample contracts or contract provisions, position descriptions, case studies, recent guidance, and success stories.

(b) The Secretary of Energy, in coordination with the Administrator of General Services, shall make available through the Task Force, within 180 days of the date of this order:

(1) the national list of qualified water and energy efficiency contractors for inclusion on a Federal schedule; and

(2) a model provision on energy efficiency and water conservation, for inclusion in new leasing contracts.

(c) Within 180 days of the date of this order, the Administrator of General Services shall:

(1) contact each utility that has an area-wide contract with GSA to determine which of those utilities will perform ''no-cost'' audits for energy efficiency and water conservation and potential solar and other renewable energy sources that comply with Federal life cycle costing procedures set forth in Subpart A, 10 CFR 436;

(2) for each energy and water utility serving the Federal Government, determine which of those utilities offers demand-side management services and incentives and obtain a list and description of those services and incentives; and

(3) prepare a list of those utilities and make that list available to all Federal property management agencies through the Task Force.

(d) Within 18 months of the date of this order, the Administrator of General Services, in consultation with the Secretary of Energy, shall develop procurement techniques, methods, and contracts to speed the purchase and installation of energy, water, and renewable energy technologies in Federal facilities. Such techniques, methods, and contracts shall be designed to utilize both direct funding by the user agency, including energy savings performance contracting, and utility rebates. To the extent permitted by law, the Administrator of OFPP shall assist the Administrator of General Services and the Secretary of Energy by eliminating unnecessary regulatory and procedural barriers that would slow the implementation of such methods, techniques, or contracts or complicate their use.

(e) Agencies are encouraged to seek technical assistance from DOE to develop and implement solar and other renewable energy projects.

(f) DOE shall conduct appropriate training for Federal agencies to assist them in identifying and funding cost-effective projects. This training shall include providing software and other technical tools to audit facilities and identify opportunities. To the extent that resources are available, DOE shall work with utilities and the private sector to encourage their participation in Federal sector programs.

(g) DOE, in coordination with EPA, GSA, and the Department of Defense (''DOD''), shall develop technical assistance services for agencies to help identify energy efficiency, water conservation, indoor air quality, solar and other renewable energy projects, new building design, fuel switching, and life cycle cost analysis. These services shall include, at a minimum, a help line, computer bulletin board, information and education materials, and project tracking methods. Agencies shall identify technical assistance needed to meet the goals and requirements of the Act and this order and seek such assistance from DOE.

(h) The Secretary of Energy and the Administrator of General Services shall explore ways to stimulate energy efficiency, water conservation, and use of solar and other renewable energy sources and shall study options such as new building performance guidelines, life cycle value engineering, and designer/builder incentives such as award fees. The studies shall be completed within 270 days of the date of this order. The OFPP will issue guidance to agencies on life cycle value engineering within 6 months of the completion of the studies.

(i) The Secretary of Energy and the Administrator of General Services shall develop and distribute through the Task Force a model building commissioning program within 270 days of the date of this order.

(j) The lists, guidelines, and services in this section of the order shall be updated periodically.

SEC. 502. *Retention of Savings and Rebates.* (a) Within a reasonable time after the date of this order, the Director of OMB, along with the Secretary of Energy, the Secretary of Defense, and the Administrator of General Services, to the extent practicable and permitted by law, shall develop guidelines and implement procedures to allow agencies, in fiscal year 1995 and beyond, to retain utility rebates and incentives received by the agency and savings from energy efficiency and water conservation efforts as provided in section 152 of the Energy Policy Act of 1992 [enacting sections 8258a and 8258b of this title, amending sections 8252 to 8256, 8258, and 8259 of this title, and repealing provisions set out as a note under section 8253 of this title] and 10 U.S.C. 2865 and 2866.

SEC. 503. *Performance Evaluations.* To recognize the responsibilities of facility managers, designers, energy managers, their superiors, and, to the extent practicable and appropriate, others critical to the implementation of this order, heads of agencies shall include successful implementation of energy efficiency, water conservation, and solar and other renewable energy projects in their position descriptions and performance evaluations.

SEC. 504. *Incentive Awards.* Agencies are encouraged to review employee incentive programs to ensure that such programs appropriately reward exceptional performance in implementing the Act and this order. Such awards may include monetary incentives such as Quality Step Increases, leave time awards and productivity gainsharing, and nonmonetary and honor awards such as increased authority, additional resources, and a series of options from which employees or teams of employees can choose.

SEC. 505. *Project Teams/Franchising.* (a) Agencies are encouraged to establish Energy Efficiency and Environmental Project Teams (''Project Teams'') to implement energy efficiency, water conservation, and solar and other renewable energy projects within their respective agencies. DOE shall develop a program to train and support the Project Teams, which should have particular expertise in innovative financing, including shared energy savings and energy savings performance contracting. The purpose of the program is to enable project teams to implement projects quickly and effectively in their own agencies.

(b) Agencies are encouraged to franchise the services of their Project Teams. The ability to access the services of other agencies' teams will foster excellence in project implementation through competition among service providers, while providing an alternative method to meet or exceed the requirements of the Act and this order for agencies that are unable to devote sufficient personnel to implement projects.

SEC. 506. *FEMP Account Managers.* FEMP shall develop a customer service program and assign account managers to agencies or regions so that each project may have a designated account manager. When requested by an agency, the account manager shall start at the audit phase and follow a project through commissioning, evaluation, and reporting. The account manager shall provide technical assistance and shall have responsibility to see that all actions possible are taken to ensure success of the project.

SEC. 507. *Procurement of Energy Efficient Products by Federal Agencies.* (a) *''Best Practice'' Technologies.* Agencies shall purchase energy-efficient products in accordance with the guidelines issued by OMB, in consultation with the Defense Logistics Agency (''DLA''), DOE, and GSA, under section 161 of the Energy Policy Act of 1992 [42 U.S.C. 8262g]. The guidelines shall include listings of energy-efficient products and practices used in the Federal Government. At a minimum, OMB shall update the listings annually. DLA, DOE, and GSA shall update the portions of the listings for which they have responsibility as new products become available and conditions change.

(1) Each agency shall purchase products listed as energy-efficient in the guidelines whenever practicable, and whenever they meet the agency's specific performance requirements and are cost-effective. Each agency shall institute mechanisms to set targets and measure progress.

(2) To further encourage a market for highly-energy-efficient products, each agency shall increase, to the extent practicable and cost-effective, purchases of products that are in the upper 25 percent of energy efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards. This requirement shall apply wherever such information is available, either through Federal or industry-approved testing and rating procedures.

(3) GSA and DLA, in consultation with DOE, other agencies, States, and industry and other nongovernment organizations, shall provide all agencies with information on specific products that meet the energy-efficiency criteria of this section. Product information should be made available in both printed and electronic formats.

(b) *Federal Market Opportunities.* DOE, after consultation with industry, utilities, and other interested parties, shall identify advanced energy-efficient and water-conserving technologies that are technically and commercially feasible but not yet available on the open market. These technologies may include, but are not limited to, the advanced appliance technologies referenced in section 127 of the Energy Policy Act of 1992 [42 U.S.C. 6292 note]. DOE, in cooperation with OMB, GSA, DOD, the National Institute of Standards and Technology (''NIST''), and EPA, shall issue a ''Federal Procurement Challenge'' inviting each Federal agency to commit a specified fraction of their purchases within a given time period to advanced, high-efficiency models of products, provided that these anticipated future products can meet the agency's energy performance, functionality, and cost requirements.

(c) *Accelerated Retirement of Inefficient Equipment.* DOE, in consultation with GSA and other agencies, shall establish guidelines for the cost-effective early retirement of older, inefficient appliances and other energy and water-using equipment in Federal facilities. Such guidelines may take into account significant improvements in energy efficiency and water conservation, opportunities to down-size or otherwise optimize the replacement equipment as a result of associated improvements in building envelope, system, or industrial process efficiency and reductions in pollutant emissions, use of chlorofluorocarbons, and other environmental improvements.

(d) *Review of Barriers.* Each agency shall review and revise Federal or military specifications, product descriptions, and standards to eliminate barriers to, and encourage Federal procurement of, products that are energy-efficient or water conserving.

PART 6—WAIVERS

SEC. 601. *Waivers.* Each agency may determine whether certain requirements in this order are inconsistent with the mission of the agency and seek a waiver of the provision from the Secretary of Energy. Any waivers authorized by the Secretary of Energy shall be included in the annual report on Federal energy management required under the Act.

PART 7—REVOCATION, LIMITATION, AND IMPLEMENTATION

SEC. 701. Executive Order No. 12759 [set out above], of April 17, 1991, is hereby revoked, except that sections 3, 9, and 10 of that order shall remain effective and shall not be revoked.

SEC. 702. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

SEC. 703. This order shall be effective immediately.

WILLIAM J. CLINTON.

CROSS REFERENCES

Emergency energy conservation, see section 8501 et seq. of this title.

Energy conservation for existing buildings, see section 6851 et seq. of this title.

Energy conservation standards for new buildings, see section 6831 et seq. of this title.

Federal buildings, energy conservation, see sections 8241 et seq. and 8251 et seq. of this title.

Photovoltaic solar electric systems, Federal utilization, see section 8271 et seq. of this title.

Powerplant and industrial fuel use, see section 8301 et seq. of this title.

Residential energy conservation, see section 8211 et seq. of this title.

Solar energy heating, cooling, research, development, and demonstration, see section 5501 et seq. of this title.

§ 6202. Definitions

As used in this chapter:

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''person'' includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government and any agency of the United States or any State or political subdivision thereof.

(3) The term ''petroleum product'' means crude oil, residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

(4) The term ''State'' means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.

(5) The term ''United States'' when used in the geographical sense means all of the States and the Outer Continental Shelf.

(6) The term ''Outer Continental Shelf'' has the same meaning as such term has under section 1331 of title 43.

(7) The term ''international energy program'' means the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including (A) the annex entitled ''Emergency Reserves'', (B) any amendment to such Agreement which includes another nation as a party to such Agreement, and (C) any technical or clerical amendment to such Agreement.

(8) The term ''severe energy supply interruption'' means a national energy supply shortage which the President determines—

(A) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(B) may cause major adverse impact on national safety or the national economy; and

(C) results, or is likely to result, from (i) an interruption in the supply of imported petroleum products, (ii) an interruption in the supply of domestic petroleum products, or (iii) sabotage or an act of God.

(9) The term ''antitrust laws'' includes—

(A) the Act entitled ''An Act to protect trade and commerce against unlawful restraints and monopolies'', approved July 2, 1890 (15 U.S.C. 1, et seq.);

(B) the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (15 U.S.C. 12, et seq.);

(C) the Federal Trade Commission Act (15 U.S.C. 41, et seq.);

(D) sections 73 and 74 of the Act entitled ''An Act to reduce taxation, to provide revenue for the Government, and for other purpose'', approved August 27, 1894 (15 U.S.C. 8 and 9); and

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21A).

(10) The term ''Federal land'' means all lands owned or controlled by the United States, including the Outer Continental Shelf, and any land in which the United States has reserved mineral interests, except lands—

(A) held in trust for Indians or Alaska Natives,

(B) owned by Indians or Alaska Natives with Federal restrictions on the title,

(C) within any area of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National System of Trails, or the Wild and Scenic Rivers System, or

(D) within military reservations.

(Pub. L. 94–163, § 3, Dec. 22, 1975, 89 Stat. 874; Pub. L. 95–619, title VI, § 691(a), Nov. 9, 1978, 92 Stat. 3287; Pub. L. 98–454, title VI, § 601(f), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 101–383, § 3(a), Sept. 15, 1990, 104 Stat. 727.)

REFERENCES IN TEXT

This chapter, referred to in introductory clause, was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Act approved July 2, 1890, referred to in par. (9)(A), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act approved October 15, 1914, referred to in par. (9)(B), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in par. (9)(C), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete clas-

sification of this Act to the Code, see section 58 of Title 15 and Tables.

Act of June 19, 1936, referred to in par. (9)(E), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

AMENDMENTS

1990—Par. (8)(C). Pub. L. 101–383 inserted ''(i)'' before ''an interruption'' and substituted ''(ii) an interruption in the supply of domestic petroleum products, or (iii)'' for ''or from''.

1984—Par. (4). Pub. L. 98–454 inserted reference to Trust Territory of the Pacific Islands.

1978—Par. (1). Pub. L. 95–619 substituted definition of ''Secretary'', meaning the Secretary of Energy, for definition of ''Administrator'', meaning Administrator of the Federal Energy Administration.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6237, 6241, 8374, 8502 of this title.

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6391, 6393, 6394, 6396 of this title.

PART A—DOMESTIC SUPPLY

§ 6211. Incentives to develop underground coal mines

(a) Loan guarantees

The Secretary may, in accordance with subsection (b) of this section and rules prescribed under subsection (d) of this section, guarantee loans made to eligible persons described in subsection (c)(1) of this section for the purpose of developing new underground coal mines.

(b) Secretary's determinations prerequisite to loan guarantee; maximum guarantees; aggregate outstanding guaranteed loans; new underground coal mines

(1) A person may receive for a loan guarantee under subsection (a) of this section only if the Secretary determines that—

(A) such person is capable of successfully developing and operating the mine with respect to which the loan guarantee is sought;

(B) such person has provided adequate assurance that the mine will be constructed and operated in compliance with the provisions of the Federal Coal Mine Health and Safety Act [30 U.S.C. 801 et seq.] and that no final judgment holding such person liable for any fine or penalty under such Act is unsatisfied;

(C) there is a reasonable prospect of repayment of the guaranteed loan;

(D) such person has obtained a contract, of at least the duration of the period during which the loan is required to be repaid, for the sale or resale of coal to be produced from such mine to a person who the Administrator of the Environmental Protection Agency certifies will be able to burn such coal in compliance with all applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.], and of any applicable implementation plan (as defined in section 110 of such Act) [42 U.S.C. 7410];

(E) the loan will be adequately secured;

(F) such person would be unable to obtain adequate financing without such guarantee;

(G) the guaranteeing of a loan to such person will enhance competition or encourage new market entry; and

(H) such person has adequate coal reserves to cover contractual commitments described in subparagraph (D).

(2) The total amount of guarantees issued to any person (including all persons affiliated with such person) may not exceed $30,000,000. The amount of a guarantee issued with respect to any loan may not exceed 80 percent of the lesser of (A) the principal balance of the loan or, (B) the cost of developing such new underground coal mine.

(3) The aggregate outstanding principal amount of loans which are guaranteed under this section may not at any time exceed $750,000,000. Not more than 20 percent of the amount of guarantees issued under this section in any fiscal year may be issued with respect to loans for the purpose of opening new underground coal mines which produce coal which is not low sulfur coal.

(c) Construction and definition of terms

For purposes of this section—

(1) A person shall be considered eligible for a guarantee under this section if such person (together with all persons affiliated with such person)—

(A) did not produce more than 1,000,000 tons of coal in the calendar year preceding the year in which he makes application for a loan guarantee under this section;

(B) did not produce more than 300,000 barrels of crude oil or own an oil refinery in such preceding calendar year; and

(C) did not have gross revenues in excess of $50,000,000 in such calendar year.

(2) A person is affiliated with another person if he controls, is controlled by, or is under common control with such other person, as such term may be further defined by rule by the Secretary.

(3) The term ''low sulfur coal'' means coal which, in a quantity necessary to produce one million British thermal units, does not contain sulfur or sulfur compounds the elemental sulfur content of which exceeds 0.6 pound. Sulfur content shall be determined after the application of any coal preparation process which takes place before sale of the coal by the producer.

(4) The term ''developing new underground coal mine'' includes expansion of any existing underground coal mine in a manner designed to increase the rate of production of such mine, and the reopening of any underground coal mine which had previously been closed. Such term also includes construction of a coal

preparation plant which is designed to reduce the sulfur content of coal produced from any coal mine.

(d) Rules and regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section. Such rules shall require that each application for a guarantee under this section shall be made in writing to the Secretary in such form and with such content and other submissions as the Secretary shall require, in order reasonably to protect the interests of the United States. Each guarantee shall be issued in accordance with subsections (a) through (c) of this section, and—

(1) under such terms and conditions as the Secretary, in consultation with the Secretary of the Treasury, considers appropriate;

(2) with such provisions with respect to the date of issue of such guarantee as the Secretary, with the concurrence of the Secretary of the Treasury, considers appropriate, except that the required concurrence of the Secretary of the Treasury may not, without the consent of the Secretary, result in a delay in the issuance of such guarantee for more than 60 days; and

(3) in such form as the Secretary considers appropriate.

(e) Recordkeeping

Each person who receives a loan guarantee under this section shall keep such records as the Secretary or the Secretary of the Treasury shall require, including records which fully disclose the total cost of the project for which a loan is guaranteed under this section and such other records as the Secretary or the Secretary of the Treasury determines necessary to facilitate an effective audit and performance evaluation. The Secretary, the Secretary of the Treasury, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers, and records of any person who receives a loan guarantee under this section.

(Pub. L. 94–163, title I, § 102, Dec. 22, 1975, 89 Stat. 876; Pub. L. 94–385, title I, § 164, Aug. 14, 1976, 90 Stat. 1142; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 95–620, title VIII, § 802, Nov. 9, 1978, 92 Stat. 3347.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act, referred to in subsec. (b)(1)(B), probably means the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22 (§ 801 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

The Clean Air Act, referred to in subsec. (b)(1)(D), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (c)(4). Pub. L. 95–620 inserted provision expanding term ''developing new underground coal mine'' to include construction of a coal preparation plant designed to reduce the sulfur content of coal produced from any coal mine.

1976—Subsec. (c)(4). Pub. L. 94–385 added par. (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

§ 6212. Domestic use of energy supplies and related materials and equipment

(a) Export restrictions

The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this chapter, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials or equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

(b) Exemptions

(1) The President shall exercise the authority provided for in subsection (a) of this section to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and the purposes of this chapter.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this chapter.

(c) Implementing restrictions

In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.] (but without regard to the phrase ''and to reduce the serious inflationary impact of foreign demand'' in section 3(2)(C) of such Act [50 App. U.S.C. 2402(2)(C)]), impose such restrictions as specified in any rule under subsection (a) of this section on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

(d) Restrictions and national interest

Any finding by the President pursuant to subsection (a) or (b) of this section and any action taken by the Secretary of Commerce pursuant

thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state,

(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

(e) Waiver of notice and comment period

(1) The provisions of subchapter II of chapter 5 of title 5 shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c) of this section, the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this chapter, to any violation of such restrictions.

(f) Quarterly reports to Congress

The President shall submit quarterly reports to the Congress concerning the administration of this section and any findings made pursuant to subsection (a) or (b) of this section.

(Pub. L. 94–163, title I, § 103, Dec. 22, 1975, 89 Stat. 877; Pub. L. 96–72, § 22(b)(1), Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

The Export Administration Act of 1969, referred to in subsec. (e)(3), is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of Title 50, Appendix, and was terminated on Sept. 30, 1979, pursuant to the terms of that Act.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–72 substituted ''1979'' for ''1969'' and ''(C)'' for ''(A)''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–72 effective upon expiration of Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which Congress by concurrent resolution or President by proclamation designated, see section 2418 of the Appendix to Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6271, 6393 of this title; title 15 section 719j.

§ 6213. Certain lease bidding arrangements prohibited

(a) Promulgation of rule by Secretary of the Interior

The Secretary of the Interior shall, not later than 30 days after December 22, 1975, prescribe and make effective a rule which prohibits the bidding for any right to develop crude oil, natural gas, and natural gas liquids on any lands located on the Outer Continental Shelf by any person if more than one major oil company, more than one affiliate of a major oil company, or a major oil company and any affiliate of a major oil company, has or have a significant ownership interest in such person. Such rule shall define affiliate relationships and significant ownership interests.

(b) Definitions

As used in this section:

(1) The term ''major oil company'' means any person who, individually or together with any other person with respect to which such person has an affiliate relationship or significant ownership interest, produced during a prior 6–month period specified by the Secretary, an average daily volume of 1,600,000 barrels of crude oil, natural gas liquids equivalents, and natural gas equivalents.

(2) One barrel of natural gas equivalent equals 5,626 cubic feet of natural gas measured at 14.73 pounds per square inch (MSL) and 60 degrees Fahrenheit.

(3) One barrel of natural gas liquids equivalent equals 1.454 barrels of natural gas liquids at 60 degrees Fahrenheit.

(c) Exemptions

The Secretary may, in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section. In considering any such request, the Secretary may exempt bidding for leases for lands in any area only if the Secretary finds, on the record after opportunity for an agency hearing, that—

(1) such lands have extremely high cost exploration or development problems; and

(2) exploration and development will not occur on such lands unless such exemption is granted.

Findings of the Secretary under this subsection shall be final, and shall not be invalidated unless found to be arbitrary or capricious.

(d) Unitization of producing fields

This section shall not be construed to prohibit the unitization of producing fields to increase production or maximize ultimate recovery of oil or natural gas, or both.

(e) Report to Congress covering extension of restrictions on joint bidding

The Secretary shall study and report to the Congress, not later than 6 months after December 22, 1975, with respect to the feasibility and desirability of extending the prohibition on joint bidding to—

(1) bidding for any right to develop crude oil, natural gas, and natural gas liquids on Federal lands other than those located on the Outer Continental Shelf; and

(2) bidding for any right to develop coal and oil shale on such lands.

(Pub. L. 94–163, title I, § 105, Dec. 22, 1975, 89 Stat. 879; Pub. L. 95–372, title II, § 205(c), Sept. 18, 1978, 92 Stat. 646.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–372 substituted ''in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section'' for ''by amendment to the rule, exempt bidding for leases for lands located in frontier or other areas determined by the Secretary to be extremely high risk lands or to present unusually high cost exploration, or development, problems'' in existing provisions and inserted provisions setting out the requisite finding of the Secretary and making arbitrariness and capriciousness of the Secretary's findings the only bases for invalidation of those findings.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to fostering of competition for Federal leases and to implementation of alternative bidding systems authorized for award of Federal leases transferred to Secretary of Energy by section 7152(b) of this title. Section 7152(b) of this title repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7172 of this title.

§ 6214. Production of oil or gas at the maximum efficient rate and temporary emergency production rate

(a) Determination by Secretary of the Interior

(1) The Secretary of the Interior, by rule on the record after an opportunity for a hearing, shall, to the greatest extent practicable, determine the maximum efficient rate of production and, if any, the temporary emergency production rate for each field on Federal lands which produces, or is determined to be capable of producing, significant volumes of crude oil or natural gas, or both.

(2) Except as provided in subsection (f) of this section, the President may, by rule or order, require crude oil or natural gas, or both, to be produced from fields on Federal lands designated by him—

(A) at the maximum efficient rate of production, and

(B) during a severe energy supply interruption, at the temporary emergency production rate

as determined pursuant to paragraph (1) for such field.

(b) Determination of rate of production by States; required production

(1) Each State or the appropriate agency thereof may, for the purposes of this section, pursuant to procedures and standards established by the State, determine the maximum efficient rate of production and, if any, the temporary emergency production rate, for each field (other than a field on Federal lands) within such State which produces, or is determined to be capable of producing, significant volumes of crude oil or natural gas, or both.

(2) If a State or the appropriate agency thereof has determined the maximum efficient rate of production and, if any, the temporary emergency production rate, or both, or their equivalents (however characterized), for any field (other than a field on Federal lands) within such State, the President may, by rule or order, during a severe energy supply interruption, require the production of such fields at the rates of production established by the State.

(c) Fields composed of Federal and non-Federal land

With respect to any field, which produces, or is determined to be capable of producing, significant volumes of crude oil, or natural gas, or both, which field is unitized and is composed of both Federal lands and lands other than Federal lands and there has been no determination of the maximum efficient rate of production or the temporary emergency production rate or both, the Secretary of the Interior may, pursuant to subsection (a)(1) of this section, determine a maximum efficient rate of production and a temporary emergency production rate, if any, for such field. The President may, during a severe energy supply interruption by rule or order, require production at the maximum efficient rate of production and the temporary emergency production rate, if any, determined for such field.

(d) Action to recover just compensation

If loss of ultimate recovery of crude oil or natural gas, or both, occurs or will occur as the result of a rule or order under the authority of this section to produce at the temporary emergency production rate, the owner of any property right who considers himself damaged by such order may bring an action in a United States district court to recover just compensation, which shall be awarded if the court finds that such loss constitutes a taking of property compensable under the Constitution.

(e) "Maximum efficient rate of production" and "temporary emergency production rate" defined

As used in this section:

(1) The term ''maximum efficient rate of production'' means the maximum rate of production of crude oil or natural gas, or both, which may be sustained without loss of ultimate recovery of crude oil or natural gas, or both, under sound engineering and economic principles.

(2) The term ''temporary emergency production rate'' means the maximum rate of production for a field—

(A) which rate is above the maximum efficient rate of production established for such field; and

(B) which may be maintained for a temporary period of less than 90 days without reservoir damage and without significant loss of ultimate recovery of crude oil or natural gas, or both, from such field.

(f) Naval Petroleum Reserves

Nothing in this section shall be construed to authorize the production of crude oil, or natural

gas, or both, from any Naval Petroleum Reserve subject to the provisions of chapter 641 of title 10.

(Pub. L. 94–163, title I, § 106, Dec. 22, 1975, 89 Stat. 880.)

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to setting of rates for production of Federal leases to establish production rates for all Federal leases transferred to Secretary of Energy by section 7152(b), (c) of this title. Section 7152(b), (c) of this title repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7172 of this title.

§ 6215. Major fuel burning stationary source

(a) Restrictions on issuance of orders or rules by Governor pursuant to section 7425 of this title

No Governor of a State may issue any order or rule pursuant to section 7425 of this title to any major fuel burning stationary source (or class or category thereof)—

(1) prohibiting such source from using fuels other than locally or regionally available coal or coal derivatives, or

(2) requiring such source to enter into a contract (or contracts) for supplies of locally or regionally available coal or coal derivatives.

(b) Petition to President

(1) The Governor of any State may petition the President to exercise the President's authorities pursuant to section 7425 of this title with respect to any major fuel burning stationary source located in such State.

(2) Any petition under paragraph (1) shall include documentation which could support a finding that significant local or regional economic disruption or unemployment would result from use by such source of—

(A) coal or coal derivatives other than locally or regionally available coal,

(B) petroleum products,

(C) natural gas, or

(D) any combination of fuels referred to in subparagraphs (A) through (C), to comply with the requirements of a State implementation plan pursuant to section 7410 of this title.

(c) Action to be taken by President

Within 90 days after the submission of a Governor's petition under subsection (b) of this section, the President shall either issue an order or rule pursuant to section 7425 of this title or deny such petition, stating in writing his reasons for such denial. In making his determination to issue such an order or rule pursuant to this subsection, the President must find that such order or rule would—

(1) be consistent with section 7425 of this title;

(2) result in no significant increase in the consumption of energy;

(3) not subject the ultimate consumer to significantly higher energy costs; and

(4) not violate any contractual relationship between such source and any supplier or transporter of fuel to such source.

(d) Effect on authority of President to allocate coal or coal derivatives

Nothing in subsection (a) or (b) of this section shall affect the authority of the President or the Secretary of the Department of Energy to allocate coal or coal derivatives under any provision of law.

(e) Definitions

The terms ''major fuel burning stationary source (or class or category thereof)'' and ''locally or regionally available coal or coal derivatives'' shall have the meanings assigned to them for the purposes of section 7425 of this title.

(Pub. L. 94–163, title I, § 107, as added Pub. L. 95–619, title VI, § 661, Nov. 9, 1978, 92 Stat. 3285.)

PART B—STRATEGIC PETROLEUM RESERVE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6249, 7270a, 7270b of this title; title 10 section 7430; title 12 section 1701z–8.

§ 6231. Congressional finding and declaration of policy

(a) The Congress finds that the storage of substantial quantities of petroleum products will diminish the vulnerability of the United States to the effects of a severe energy supply interruption, and provide limited protection from the short-term consequences of interruptions in supplies of petroleum products.

(b) It is hereby declared to be the policy of the United States to provide for the creation of a Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products, but not less than 150 million barrels of petroleum products by the end of the 3–year period which begins on December 22, 1975, for the purpose of reducing the impact of disruptions in supplies of petroleum products or to carry out obligations of the United States under the international energy program. It is further declared to be the policy of the United States to provide for the creation of an Early Storage Reserve, as part of the Reserve, for the purpose of providing limited protection from the impact of near-term disruptions in supplies of petroleum products or to carry out obligations of the United States under the international energy program.

(Pub. L. 94–163, title I, § 151, Dec. 22, 1975, 89 Stat. 881.)

STUDY OF A STRATEGIC ETHANOL RESERVE

Pub. L. 99–198, title XVII, § 1778, Dec. 23, 1985, 99 Stat. 1659, provided that:

''(a) The Secretary of Agriculture shall conduct a study of the cost effectiveness, the economic benefits, and the feasibility of establishing, maintaining, and utilizing a Strategic Ethanol Reserve relative to the existing Strategic Petroleum Reserve.

''(b) The study shall be completed within one year after the enactment of this section [Dec. 23, 1985] and shall include, among other considerations—

''(1) the benefits and losses related to the U.S. economy, farm income, employment, government commodity programs, and the trade deficit of utilizing a

Strategic Ethanol Reserve, as opposed to the Strategic Petroleum Reserve; and

''(2) the savings from storing ethanol as opposed to storing the amount of CCC-held grain necessary to produce the ethanol.

''(c) If the study shows that the Strategic Ethanol Reserve is cost effective, beneficial to the U.S. economy, and feasible in comparison with the Strategic Petroleum Reserve, the Secretary of Agriculture may establish, maintain, and utilize a Strategic Ethanol Reserve.''

ADDITIONAL CONGRESSIONAL FINDINGS

Pub. L. 97–35, title X, § 1032, Aug. 13, 1981, 95 Stat. 618, provided that: ''The Congress finds that—

''(1) the Strategic Petroleum Reserve should be considered a national security asset; and

''(2) enlarging the capacity and filling of the Strategic Petroleum Reserve should be accelerated (to the extent technically and economically practicable) to take advantage of any increased availability of crude oil in the world market from time to time.''

§ 6232. Definitions

As used in this part and part C of this subchapter:

(1) The term ''Early Storage Reserve'' means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 6235 of this title.

(2) The term ''importer'' means any person who owns, at the first place of storage, any petroleum product imported into the United States.

(3) The term ''Industrial Petroleum Reserve'' means that portion of the Strategic Petroleum Reserve which consists of petroleum products owned by importers or refiners and acquired, stored, or maintained pursuant to section 6236 of this title.

(4) The term ''interest in land'' means any ownership or possessory right with respect to real property, including ownership in fee, an easement, a leasehold, and any subsurface or mineral rights.

(5) The term ''readily available inventories'' means stocks and supplies of petroleum products which can be distributed or used without affecting the ability of the importer or refiner to operate at normal capacity; such term does not include minimum working inventories or other unavailable stocks.

(6) The term ''refiner'' means any person who owns, operates, or controls the operation of any refinery.

(7) The term ''Regional Petroleum Reserve'' means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 6237 of this title.

(8) The term ''related facility'' means any necessary appurtenance to a storage facility, including pipelines, roadways, reservoirs, and salt brine lines.

(9) The term ''Reserve'' means the Strategic Petroleum Reserve.

(10) The term ''storage facility'' means any facility or geological formation which is capable of storing significant quantities of petroleum products.

(11) The term ''Strategic Petroleum Reserve'' means petroleum products stored in storage facilities pursuant to this part; such term includes the Industrial Petroleum Reserve, the Early Storage Reserve, and the Regional Petroleum Reserve.

(Pub. L. 94–163, title I, § 152, Dec. 22, 1975, 89 Stat. 882; Pub. L. 101–383, § 6(a)(1), Sept. 15, 1990, 104 Stat. 729.)

AMENDMENTS

1990—Pub. L. 101–383 inserted ''and part C of this subchapter'' after ''this part''.

§ 6233. Strategic Petroleum Reserve Office

There is established, in the Federal Energy Administration, a Strategic Petroleum Reserve Office. The Secretary, acting through such Office and in accordance with this part, shall exercise authority over the establishment, management, and maintenance of the Reserve.

(Pub. L. 94–163, title I, § 153, Dec. 22, 1975, 89 Stat. 882; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administration or in its Administrator, officers and components transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 6234. Strategic Petroleum Reserve

(a) Establishment

(1) A Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products shall be created pursuant to this part. By the end of the 3–year period which begins on December 22, 1975, the Strategic Petroleum Reserve (or the Early Storage Reserve authorized by section 6235 of this title, if no Strategic Petroleum Reserve Plan has become effective pursuant to the provisions of section 6239(a) of this title) shall contain not less than 150 million barrels of petroleum products.

(2) Beginning on October 24, 1992, the President shall take actions to enlarge the Strategic Petroleum Reserve to 1,000,000,000 barrels as rapidly as possible. Such actions may include—

(A) petroleum acquisition, transportation, and injection activities at the highest practicable fill rate achievable, subject to the availability of appropriated funds;

(B) contracting for petroleum product not owned by the United States as specified in part C of this subchapter;

(C) contracting for petroleum product for storage in facilities not owned by the United States, except that no such product may be stored in such facilities unless petroleum product stored in facilities owned by the United States on the date such product is delivered for storage is at least 750,000,000 barrels;

(D) carrying out the activities described in section 6240(h) of this title;

(E) the transferring of oil from the Naval Petroleum Reserve; and

(F) other activities specified in this subchapter.

(b) Strategic Petroleum Reserve Plan

The Secretary, not later than December 15, 1976, shall prepare and transmit to the Congress, in accordance with section 6421 of this title, a Strategic Petroleum Reserve Plan. Such Plan shall comply with the provisions of this section and shall detail the Secretary's proposals for designing, constructing, and filling the storage and related facilities of the Reserve.

(c) Levels of crude oil to be stored

(1) To the maximum extent practicable and except to the extent that any change in the storage schedule is justified pursuant to subsection (e)(6) of this section, the Strategic Petroleum Reserve Plan shall provide that:

(A) within 7 years after December 22, 1975, the volume of crude oil stored in the Reserve shall equal the total volume of crude oil which was imported into the United States during the base period specified in paragraph (2);

(B) within 18 months after December 22, 1975, the volume of crude oil stored in the Reserve shall equal not less than 10 percent of the goal specified in subparagraph (A);

(C) within 3 years after December 22, 1975, the volume of crude oil stored in the Reserve shall equal not less than 25 percent of the goal specified in subparagraph (A); and

(D) within 5 years after December 22, 1975, the volume of crude oil stored in the Reserve shall equal not less than 65 percent of the goal specified in subparagraph (A).

Volumes of crude oil initially stored in the Early Storage Reserve and volumes of crude oil stored in the Industrial Petroleum Reserve, and the Regional Petroleum Reserve shall be credited toward attainment of the storage goals specified in this subsection.

(2) The base period shall be the period of the 3 consecutive months, during the 24–month period preceding December 22, 1975, in which average monthly import levels were the highest.

(d) Plan objectives

The Strategic Petroleum Reserve Plan shall be designed to assure, to the maximum extent practicable, that the Reserve will minimize the impact of any interruption or reduction in imports of refined petroleum products and residual fuel oil in any region which the Secretary determines is, or is likely to become, dependent upon such imports for a substantial portion of the total energy requirements of such region. The Strategic Petroleum Reserve Plan shall be designed to assure, to the maximum extent practicable, that each noncontiguous area of the United States which does not have overland access to domestic crude oil production has its component of the Strategic Petroleum Reserve within its respective territory.

(e) Plan provisions

The Strategic Petroleum Reserve Plan shall include:

(1) a comprehensive environmental assessment;

(2) a description of the type and proposed location of each storage facility (other than storage facilities of the Industrial Petroleum Reserve) proposed to be included in the Reserve;

(3) a statement as to the proximity of each such storage facility to related facilities;

(4) an estimate of the volumes and types of petroleum products proposed to be stored in each such storage facility;

(5) a projection as to the aggregate size of the Reserve, including a statement as to the most economically-efficient storage levels for each such storage facility;

(6) a justification for any changes, with respect to volumes or dates, proposed in the storage schedule specified in subsection (c) of this section, and a program schedule for overall development and completion of the Reserve (taking into account all relevant factors, including cost effectiveness, the need to construct related facilities, and the ability to obtain sufficient quantities of petroleum products to fill the storage facilities to the proposed storage levels);

(7) an estimate of the direct cost of the Reserve, including—

(A) the cost of storage facilities;

(B) the cost of the petroleum products to be stored;

(C) the cost of related facilities; and

(D) management and operation costs;

(8) an evaluation of the impact of developing the Reserve, taking into account—

(A) the availability and the price of supplies and equipment and the effect, if any, upon domestic production of acquiring such supplies and equipment for the Reserve;

(B) any fluctuations in world, and domestic, market prices for petroleum products which may result from the acquisition of substantial quantities of petroleum products for the Reserve;

(C) the extent to which such acquisition may support otherwise declining market prices for such products; and

(D) the extent to which such acquisition will affect competition in the petroleum industry;

(9) an identification of the ownership of each storage and related facility proposed to be included in the Reserve (other than storage and related facilities of the Industrial Petroleum Reserve);

(10) an identification of the ownership of the petroleum products to be stored in the Reserve in any case where such products are not owned by the United States;

(11) a statement of the manner in which the provisions of this part relating to the establishment of the Industrial Petroleum Reserve and the Regional Petroleum Reserve will be implemented; and

(12) a Distribution Plan setting forth the method of drawdown and distribution of the Reserve.

(Pub. L. 94–163, title I, § 154, Dec. 22, 1975, 89 Stat. 882; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102–486, title XIV, § 1402, Oct. 24, 1992, 106 Stat. 2994.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486 designated existing provisions as par. (1) and added par. (2).

1978—Subsecs. (b), (d). Pub. L. 95–619 substituted ''Secretary'' and ''Secretary's'' for ''Administrator''

and ''Administrator's'', respectively, meaning Administrator of the Federal Energy Administration, wherever appearing.

STRATEGIC PETROLEUM RESERVE DRAWDOWN PLAN

Pub. L. 97–229, § 4(c), Aug. 3, 1982, 96 Stat. 252, provided that: ''On or before December 1, 1982, the President shall transmit to the Congress a drawdown plan for the Strategic Petroleum Reserve consistent with the requirements of section 154 of the Energy Policy and Conservation Act [this section]. Such plan shall be transmitted to the Congress as an amendment to the Strategic Petroleum Reserve Plan. Such amendment shall take effect on the date it is transmitted to the Congress and shall not be subject to section 159(e) of such Act [section 6239(e) of this title] relating to Congressional review. Subsequent amendments to such plan shall be in accordance with subsections (d) and (e) of such section 159.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6235, 6238, 6239, 6246, 6249 of this title; title 15 section 714b.

§ 6235. Early Storage Reserve

(a) Establishment; design; ownership of stored petroleum products; minimum number of barrels of petroleum products in Reserve if Strategic Petroleum Reserve Plan has not become effective

(1) The Secretary shall establish an Early Storage Reserve as part of the Strategic Petroleum Reserve. The Early Storage Reserve shall be designed to store petroleum products, to the maximum extent practicable, in existing storage capacity. Petroleum products stored in the Early Storage Reserve may be owned by the United States or may be owned by others and stored pursuant to section 6236(b) of this title.

(2) If the Strategic Petroleum Reserve Plan has not become effective under section 6239(a) of this title, the Early Storage Reserve shall contain not less than 150 million barrels of petroleum products by the end of the 3–year period which begins on December 22, 1975.

(b) Meeting regional needs for residual fuel oil and refined petroleum products

The Early Storage Reserve shall provide for meeting regional needs for residual fuel oil and refined petroleum products in any region which the Secretary determines is, or is likely to become, dependent upon imports of such oil or products for a substantial portion of the total energy requirements of such region.

(c) Early Storage Reserve Plan

Within 90 days after December 22, 1975, the Secretary shall prepare and transmit to the Congress an Early Storage Reserve Plan which shall provide for the storage of not less than 150 million barrels of petroleum products by the end of 3 years from December 22, 1975. Such plan shall detail the Secretary's proposals for implementing the Early Storage Reserve requirements of this section. The Early Storage Reserve Plan shall, to the maximum extent practicable, provide for, and set forth the manner in which, Early Storage Reserve facilities will be incorporated into the Strategic Petroleum Reserve after the Strategic Petroleum Reserve Plan has become effective under section 6239(a) of this title. The Early Storage Reserve Plan shall include, with respect to the Early Storage Reserve, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 6234(e) of this title requires to be included in the Strategic Petroleum Reserve Plan, including a Distribution Plan for the Early Storage Reserve.

(Pub. L. 94–163, title I, § 155, Dec. 22, 1975, 89 Stat. 884; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' and ''Secretary's'' for ''Administrator'' and ''Administrator's'', respectively, meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6232, 6234, 6246 of this title.

§ 6236. Industrial Petroleum Reserve

(a) Establishment

The Secretary may establish an Industrial Petroleum Reserve as part of the Strategic Petroleum Reserve.

(b) Amounts of petroleum products required to be stored by importers and refiners; exemption of products from tariff or import license fee

To implement the Early Storage Reserve Plan or the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 6239(a) of this title, the Secretary may require each importer of petroleum products and each refiner to (1) acquire, and (2) store and maintain in readily available inventories, petroleum products in amounts determined by the Secretary, except that the Secretary may not require any such importer or refiner to store such petroleum products in an amount greater than 3 percent of the amount imported or refined by such person, as the case may be, during the previous calendar year. Petroleum products imported and stored in the Industrial Petroleum Reserve shall be exempt from any tariff or import license fee.

(c) Implementation of section by Secretary

The Secretary shall implement this section in a manner which is appropriate to the maintenance of an economically sound and competitive petroleum industry. The Secretary shall take such steps as are necessary to avoid inequitable economic impacts on refiners and importers, and he may grant relief to any refiner or importer who would otherwise incur special hardship, inequity, or unfair distribution of burdens as the result of any rule, regulation, or order promulgated under this section. Such relief may include full or partial exemption from any such rule, regulation, or order and the issuance of an order permitting such an importer or refiner to store petroleum products owned by such importer or refiner in surplus storage capacity owned by the United States.

(Pub. L. 94–163, title I, § 156, Dec. 22, 1975, 89 Stat. 885; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6232, 6235, 6239, 6240, 6241 of this title.

§ 6237. Regional Petroleum Reserve

(a) Federal Energy Administration Regions in which Reserve may be established and maintained

(1) The Strategic Petroleum Reserve Plan shall provide for the establishment and maintenance of a Regional Petroleum Reserve in, or readily accessible to, each Federal Energy Administration Region, as defined in title 10, Code of Federal Regulations in effect on November 1, 1975, in which imports of residual fuel oil or any refined petroleum product, during the 24-month period preceding the date of computation, equal more than 20 percent of demand for such oil or product in such regions during such period, as determined by the Secretary. Such volume shall be computed annually.

(2) For the purpose of carrying out this section—

(A) any State that is an island shall be considered to be a separate Federal Energy Administration Region, as defined in title 10, Code of Federal Regulations, as in effect on November 1, 1975;

(B) determinations made with respect to Regions, other than States that are islands, shall be made as if the islands were not part of the Regions; and

(C) with respect to determinations made for any State that is an island, the term ''refined petroleum product'' shall have the same meaning given the term ''petroleum product'' in section 6202(3) of this title.

(b) Level of Reserve

To implement the Strategic Petroleum Reserve Plan, the Secretary shall accumulate and maintain in or near any such Federal Energy Administration Region described in subsection (a) of this section, a Regional Petroleum Reserve containing volumes of such oil or product, described in subsection (a) of this section, at a level adequate to provide substantial protection against an interruption or reduction in imports of such oil or product to such region, except that the level of any such Regional Petroleum Reserve shall not exceed the aggregate volume of imports of such oil or product into such region during the period of the 3 consecutive months, during the 24-month period specified in subsection (a) of this section, in which average monthly import levels were the highest, as determined by the Secretary. Such volume shall be computed annually.

(c) Substitutions for all or part of volume stored in Reserve

The Secretary may place in storage crude oil, residual fuel oil, or any refined petroleum product in substitution for all or part of the volume of residual fuel oil or any refined petroleum product stored in any Regional Petroleum Reserve pursuant to the provisions of this section if he finds that such substitution (1) is necessary or desirable for purposes of economy, efficiency, or for other reasons, and (2) may be made without delaying or otherwise adversely affecting the fulfillment of the purpose of the Regional Petroleum Reserve.

(Pub. L. 94–163, title I, § 157, Dec. 22, 1975, 89 Stat. 885; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102–486, title XIV, § 1405, Oct. 24, 1992, 106 Stat. 2995.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486 designated existing provisions as par. (1) and added par. (2).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administration or in its Administrator, officers and components transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6232 of this title.

§ 6238. Utility Reserves; Coal Reserves; Remote Crude Oil and Natural Gas Reserves

Within 6 months after the Strategic Petroleum Reserve Plan is transmitted to the Congress, pursuant to the requirements of section 6234(b) of this title, the Secretary shall prepare and transmit to the Congress a report setting forth his recommendations concerning the necessity for, and feasibility of, establishing—

(1) Utility Reserves containing coal, residual fuel oil, and refined petroleum products, to be established and maintained by major fossil-fuel-fired baseload electric power generating stations;

(2) Coal Reserves to consist of (A) federally-owned coal which is mined by or for the United States from Federal lands, and (B) Federal lands from which coal could be produced with minimum delay; and

(3) Remote Crude Oil and Natural Gas Reserves consisting of crude oil and natural gas to be acquired and stored by the United States, in place, pursuant to a contract or other agreement or arrangement entered into between the United States and persons who discovered such oil or gas in remote areas.

(Pub. L. 94–163, title I, § 158, Dec. 22, 1975, 89 Stat. 886; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'' meaning Administrator of the Federal Energy Administration.

§ 6239. Congressional review of Strategic Petroleum Reserve Plan; implementation

(a) Congressional review of Strategic Petroleum Reserve Plan as prerequisite to implementation

The Strategic Petroleum Reserve Plan shall not become effective and may not be implemented, unless—

(1) the Secretary has transmitted such Plan to the Congress pursuant to section 6234(b) of this title; and

(2) neither House of Congress has disapproved (or both Houses have approved) such Plan, in accordance with the procedures specified in section 6421 of this title.

(b) Effective date of Strategic Petroleum Reserve Plan

For purposes of congressional review of the Strategic Petroleum Reserve Plan under subsection (a) of this section, the 5 calendar days described in section 6421(f)(4)(A) of this title shall be lengthened to 15 calendar days, and the 15 calendar days described in section 6421(c) and (d) of this title shall be lengthened to 45 calendar days.

(c) Preparation and transmittal to Congress of proposals for designing, constructing, and filling storage or related facilities; statement accompanying proposal

The Secretary may, prior to transmittal of the Strategic Petroleum Reserve Plan, prepare and transmit to the Congress proposals for designing, constructing, and filling storage or related facilities. Any such proposal shall be accompanied by a statement explaining (1) the need for action on such proposals prior to completion of such Plan, (2) the anticipated role of the proposed storage or related facilities in such Plan, and (3) to the maximum extent practicable, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 6234(e) of this title requires to be included in the Strategic Petroleum Reserve Plan.

(d) Preparation and transmittal to Congress of amendments to Strategic Petroleum Reserve Plan or Early Storage Reserve Plan; statement accompanying amendment

The Secretary may prepare amendments to the Strategic Petroleum Reserve Plan or to the Early Storage Reserve Plan. He shall transmit any such amendment to the Congress together with a statement explaining the need for such amendment and, to the maximum extent practicable, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 6234(e) of this title requires to be included in the Strategic Petroleum Reserve Plan.

(e) Presidential determination; 60-day period

Subject to section 6241(g)(2) of this title, any amendment transmitted pursuant to subsection (d) of this section may not become effective until 60 days after the date of such transmittal, except that such 60-day period shall not apply if the President determines that such amendment is required by a severe energy supply interruption or by obligations of the United States under the international energy program.

(f) Powers of Secretary in implementing Strategic Petroleum Reserve Plan, Early Storage Reserve Plan, proposals, and amendments

To the extent necessary or appropriate to implement—

(1) the Strategic Petroleum Reserve Plan which has taken effect pursuant to subsection (a) of this section;

(2) the Early Storage Reserve Plan;

(3) any proposal described in subsection (c) of this section, or any amendment described in subsection (d) of this section, which such proposal or amendment has taken effect pursuant to subsection (e) of this section;

(4) any technical or clerical amendment or any amendment to the Early Storage Reserve Plan; and

(5) the storage of petroleum products in interim storage facilities,

the Secretary may:

(A) promulgate rules, regulations, or orders;

(B) acquire by purchase, condemnation, or otherwise, land or interests in land for the location of storage and related facilities;

(C) construct, purchase, lease, or otherwise acquire storage and related facilities;

(D) use, lease, maintain, sell, or otherwise dispose of storage and related facilities acquired pursuant to this part;

(E) acquire, subject to the provisions of section 6240 of this title, by purchase, exchange, or otherwise, petroleum products for storage in the Strategic Petroleum Reserve, including the Early Storage Reserve and the Regional Petroleum Reserve;

(F) store petroleum products in storage facilities owned and controlled by the United States or in storage facilities owned by others if such facilities are subject to audit by the United States;

(G) execute any contracts necessary to carry out the provisions of such Strategic Petroleum Reserve Plan, Early Storage Reserve Plan, proposal or amendment;

(H) require any importer of petroleum products or any refiner to (A) acquire, and (B) store and maintain in readily available inventories, petroleum products in the Industrial Petroleum Reserve, pursuant to section 6236 of this title;

(I) require the storage of petroleum products in the Industrial Petroleum Reserve, pursuant to section 6236 of this title, on such reasonable terms as the Secretary may specify in storage facilities owned and controlled by the United States or in storage facilities other than those owned by the United States if such facilities are subject to audit by the United States;

(J) require the maintenance of the Industrial Petroleum Reserve;

(K) maintain the Reserve; and

(L) bring an action, whenever he deems it necessary to implement the Strategic Petroleum Reserve Plan, in any court having jurisdiction of such proceedings, to acquire by condemnation any real or personal property, including facilities, temporary use of facilities, or other interests in land, together with any personal property located thereon or used therewith.

(g) Acquisition of property by negotiation as prerequisite to condemnation

Before any condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation, unless, the effort to acquire such property by negotiation would, in the judgement of the Secretary be futile or so time-consuming as to unreasonably

delay the implementation of the Strategic Petroleum Reserve Plan, because of (1) reasonable doubt as to the identity of the owners, (2) the large number of persons with whom it would be necessary to negotiate, or (3) other reasons.

(h) Use of interim storage facilities; environmental considerations for existing facilities

(1) No amendment to the Strategic Petroleum Reserve Plan relating to interim storage facilities shall be required prior to the storage of petroleum products in such facilities.

(2) Petroleum products stored in interim storage facilities pursuant to this part shall be considered to be in storage in the Reserve.

(3)(A) No action relating to the storage of petroleum products in existing interim storage facilities in the Reserve shall be deemed to be ''a major Federal action significantly affecting the quality of the human environment'' within the meaning of that term as it is used in section 4332(2)(C) of this title.

(B) For purposes of this paragraph, an interim storage facility shall be considered to be an existing interim storage facility if it—

(i) is in existence on July 1, 1982;

(ii) was constructed in a manner appropriate for storing petroleum products; and

(iii) is not modified after July 1, 1982, in any manner which substantially increases the storage capacity of the facility. Any modification of such facility may not include replacement or reconstruction.

(4) The term ''interim storage facilities'', when used in this part, may include any vessel which meets the applicable requirements under this part.

(i) Report to Congress on results of negotiations for enlargement of Strategic Petroleum Reserve to one billion barrels

No later than 18 months after September 15, 1990, the Secretary shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of negotiations undertaken pursuant to part C of this subchapter. The report shall—

(1) describe the terms of any contracts negotiated pursuant to part C of this subchapter and any cost savings that would result from such contracts relative to the costs of acquisition pursuant to this part; and

(2) give all available information on any cost savings that would likely result from additional contracts that could be negotiated pursuant to part C of this subchapter for completion of the storage of one billion barrels of petroleum product in the Reserve relative to the costs of acquisition pursuant to this part.

(j) Amendment of Strategic Petroleum Reserve Plan to include plans for completion of storage of one billion barrels

No later than 24 months after September 15, 1990, the Secretary shall amend the Strategic Petroleum Reserve Plan to prescribe plans for completion of storage of one billion barrels of petroleum product in the Reserve. Such amendment shall comply with the provisions of this section and shall detail the Secretary's plans for the design, construction, leasing or other acquisition, and fill of storage and related facilities of the Reserve to achieve such one billion barrels of storage. Such amendment shall not be subject to the congressional review procedures contained in section 6421 of this title. In assessing alternatives in the development of such plans, the Secretary shall consider leasing privately owned storage facilities.

(k) Exemption from subtitle IV of title 49

A storage or related facility of the Strategic Petroleum Reserve owned by or leased to the United States is not subject to the Interstate Commerce Act.

(*l*) Drawdown plan amendments during implementation

Notwithstanding subsection (d) of this section, during any period in which the Distribution Plan is being implemented, the Secretary may amend the plan and promulgate rules, regulations, or orders to implement such amendments in accordance with section 6393 of this title, without regard to the requirements of section 553 of title 5 and section 7191 of this title. Such amendments shall be transmitted to the Congress together with a statement explaining the need for such amendments.

(Pub. L. 94–163, title I, §159, Dec. 22, 1975, 89 Stat. 886; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 97–229, §4(b)(1), (2)(B), Aug. 3, 1982, 96 Stat. 251, 252; Pub. L. 99–58, title I, §102(a), July 2, 1985, 99 Stat. 102; Pub. L. 101–383, §§4(a), 9, 11, Sept. 15, 1990, 104 Stat. 728, 735.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified generally to chapters 1, 8, 12, 13, and 19 (§§1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of former Title 49, Transportation. The Act was repealed (subject to an exception) by Pub. L. 95–473, §4(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49. Section 4(c) of Pub. L. 95–473 excepted from repeal those provisions of the Interstate Commerce Act that vested functions in the Interstate Commerce Commission, or the chairman or members of the Commission, related to transportation of oil by pipeline and that were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission by sections 7155 and 7172(b) of this title.

AMENDMENTS

1990—Subsecs. (i), (j). Pub. L. 101–383, §4(a), added subsecs. (i) and (j).

Subsec. (k). Pub. L. 101–383, §9, added subsec. (k).

Subsec. (*l*). Pub. L. 101–383, §11, added subsec. (*l*).

1985—Subsec. (e). Pub. L. 99–58 amended subsec. (e) generally, substituting provisions directing that amendments transmitted pursuant to subsec. (d) of this section not become effective until 60 days after transmittal except in the case of enumerated presidential determinations for provisions which had formerly empowered Congress to disapprove of transmitted proposals and amendments in accordance with the procedures specified in section 6421 of this title.

1982—Subsec. (f)(5). Pub. L. 97–229, §4(b)(1), added par. (5).

Subsec. (h). Pub. L. 97–229, §4(b)(2)(B), added subsec. (h).

1978—Subsecs. (a)(1), (c), (d), (e)(1), (f), (f)(I), (g). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'',

meaning Administrator of the Federal Energy Administration, wherever appearing.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6234, 6235, 6236, 6240, 6241, 6246 of this title; title 10 section 7430.

§ 6240. Petroleum products for storage, transport, or exchange

(a) Eligibility of petroleum products

The Secretary is authorized, for purposes of implementing the Strategic Petroleum Reserve Plan or the Early Storage Reserve Plan, to place in storage, transport, or exchange—

(1) crude oil produced from Federal lands, including crude oil produced from the Naval Petroleum Reserves to the extent that such production is authorized by law;

(2) crude oil which the United States is entitled to receive in kind as royalties from production on Federal lands; and

(3) petroleum products acquired by purchase, exchange, or otherwise.

(b) Objectives in determining manner of acquisition

The Secretary shall, to the greatest extent practicable, acquire petroleum products for the Reserve, including the Early Storage Reserve and the Regional Petroleum Reserve in a manner consonant with the following objectives:

(1) minimization of the cost of the Reserve;

(2) orderly development of the Naval Petroleum Reserves to the extent authorized by law;

(3) minimization of the Nation's vulnerability to a severe energy supply interruption;

(4) minimization of the impact of such acquisition upon supply levels and market forces; and

(5) encouragement of competition in the petroleum industry.

(c) Fill operations by President

(1)(A) The President shall immediately undertake, and thereafter continue, petroleum products acquisition, transportation, and injection activities, to the extent funds are available pursuant to section 6247(b)(2) and (b)(3) of this title, at a level sufficient to assure that the petroleum products in the Strategic Petroleum Reserve will be increased at an average annual rate of at least the minimum required fill rate until the quantity of petroleum products stored within the Strategic Petroleum Reserve is at least 500,000,000 barrels.

(B) Subject to subparagraph (C), the minimum required fill rate shall be 300,000 barrels per day for purposes of subparagraph (A), unless there is in effect a finding by the President in his discretion for good cause that compliance with such rate would not be in the national interest. Any finding by the President under this subparagraph takes effect on the date such finding is transmitted to the Congress and ceases to have effect at the end of the fiscal year in which such finding was made. Any such finding transmitted to the Congress shall include a statement of the facts upon which the finding is based. Any such finding shall not be subject to judicial review.

(C) The minimum required fill rate shall be 220,000 barrels per day for purposes of subparagraph (A) during the period in which any finding by the President under subparagraph (B) is in effect.

(D)(i) If funds are available in any given fiscal year after fiscal year 1982 to achieve an average annual fill rate higher than the minimum required fill rate in effect under subparagraph (C), the minimum required fill rate shall be the highest practicable fill rate achievable, subject to the availability of appropriated funds.

(ii) The Impoundment Control Act of 1974 [2 U.S.C. 681 et seq.] shall apply to funds made available under section 6247(b) and (e) of this title.

(2) After the Strategic Petroleum Reserve reaches a level of 500,000,000 barrels, the President shall immediately seek to undertake, and thereafter continue, petroleum products acquisition, transportation, and injection activities at a level sufficient to assure that the petroleum products in the Strategic Petroleum Reserve will be increased at an average annual rate of at least 300,000 barrels per day until the quantity of petroleum products stored within the Strategic Petroleum Reserve is at least 750,000,000 barrels.

(3) Notwithstanding paragraph (2), beginning in fiscal year 1987 and continuing through fiscal year 1994 until the quantity of crude oil in storage within the Reserve is 1,000,000,000 barrels, the President shall carry out petroleum acquisition, transportation, and injection activities at the highest practicable fill rate achievable, subject to the availability of appropriated funds.

(d) Crude oil from Naval Petroleum Reserve Numbered 1; reduction in fill-rate requirements

(1) Notwithstanding any other provision of law, no portion of the United States share of crude oil in Naval Petroleum Reserve Numbered 1 (Elk Hills) may be sold or otherwise disposed of other than to the Strategic Petroleum Reserve (either directly or by exchange) during any fiscal year, except as provided in paragraph (2), unless—

(A) the quantity of crude oil in storage within Government owned facilities of the Strategic Petroleum Reserve is at least 750,000,000 barrels; or

(B) acquisition, transportation, and injection activities for the Reserve are being undertaken for that fiscal year at a level sufficient to assure that crude oil in storage in the Strategic Petroleum Reserve will be increased at an average rate of at least 75,000 barrels per day for that fiscal year and the Secretary has amended the Strategic Petroleum Reserve Plan as required by section 6239(j) of this title.

(2) The requirements of paragraph (1) shall not apply to the United States share of crude oil in the Naval Petroleum Reserve Numbered 1 which is—

(A) sold to small refiners under section 7430(d) of title 10;

(B) produced, consistent with sound engineering practices, for the purpose of preventing a reduction in the total quantity of crude oil available for ultimate recovery from the Naval Petroleum Reserve Numbered 1, and the amount produced is the minimum necessary to prevent such reduction; or

(C) produced for national defense purposes under section 7422(b)(2) of title 10, pursuant to an authorization of Congress under that section during the preceding 9-month period.

(3) In determining the number of barrels of crude oil for purposes of subparagraph (A) of paragraph (1), any crude oil drawndown from the Reserve as a result of any drawdown and distribution carried out under section 6241(g) of this title and not replaced under section 6241(g)(6)(B) of this title shall be considered to be within the Reserve.

(4) For any fiscal year in which purchases of petroleum products are suspended, or the sale of petroleum products is carried out, under subsection (f) of this section, the fill-rate requirements of paragraph (1)(B) shall be reduced by—

(A) the amount of petroleum products are[1] acquired for such fiscal year as a result of such suspension; plus

(B) the amount of petroleum products sold under such subsection during such fiscal year.

(e) Suspensions of fill operations, etc., during emergency situations; applicability, etc.

(1) The provisions of subsections (c) and (d) of this section shall not apply (A) if there is in effect an order of the President directing drawdown and distribution pursuant to section 6241 of this title or (B) if—

(i) the President has found in his discretion that compliance with such provisions significantly impairs the ability of the United States to respond to a severe energy supply interruption or to meet the obligations of the United States under the international energy program; and

(ii) the President has transmitted such finding to the Congress.

(2) The suspension of the application of subsections (c) and (d) of this section under paragraph (1)(B) may become effective on the day the finding is transmitted to the Congress and shall terminate nine months thereafter or on such earlier date as is specified in such finding.

(3) The period of any suspension of subsections (c) and (d) of this section under this subsection, and the quantity of any petroleum product involved, shall be disregarded in applying the provisions of such subsections for periods following such suspension.

(f) Predrawdown diversion

If the Secretary finds that a severe energy supply interruption may be imminent, the Secretary may suspend the acquisition of petroleum product for, and the injection of petroleum product into, the Reserve and may sell any petroleum product acquired for and in transit to, but not injected into, the Reserve.

[1] So in original. The word ''are'' probably should not appear.

(g) Test program of storage of refined petroleum products; report to Congress

(1) The Secretary shall conduct a test program of storage of refined petroleum products within the Reserve. The test program shall commence during fiscal year 1992 and continue through fiscal year 1994. The test program shall demonstrate mechanisms for storage of refined petroleum products within the Reserve which may be drawn down in accordance with this part.

(2) The mechanisms demonstrated under paragraph (1)—

(A) shall include the acquisition by lease or purchase, or both, of refined petroleum products for storage in the Reserve and shall include the acquisition by lease of storage facilities; and

(B) may include other mechanisms including, but not limited to, industrial petroleum reserves pursuant to section 6236 of this title and State set-aside programs, except that such mechanisms must provide equivalent control over the drawdown and distribution of such refined petroleum products as is provided under this part.

(3) Any refined petroleum products stored in the Reserve under this subsection shall be stored in locations to be determined by the Secretary, taking into account the proximity of existing distribution systems, the proximity of the area or areas of the United States most dependent on imported petroleum products or likely to experience shortages of refined petroleum products, and the capability for expeditious distribution to such area or areas.

(4) In the conduct of the test program under paragraph (1), the Secretary shall increase the quantity of refined petroleum products acquired for storage in the Reserve by an amount equal to 10 percent of the fill of the Reserve during each of the fiscal years 1992, 1993, and 1994, except that the Secretary may not expend more than 10 percent of the funds appropriated for the acquisition, transportation and injection of petroleum products into the Reserve during each of the fiscal years covered by the test program.

(5) In the conduct of the test program under paragraph (1), the Secretary may not construct or purchase facilities for the storage of refined petroleum products.

(6) Refined petroleum products stored in the Reserve under the test program may be withdrawn from the Reserve before the conclusion of the test program—

(A) as may be necessary to turn such products over because of changes in the physical characteristics of the product; or

(B) on the basis of a finding made under section 6241 of this title.

(7) No later than January 31, 1994, the Secretary shall transmit to the Congress a report on the test program. The report shall evaluate the mechanisms demonstrated under the test program, other potential mechanisms, and the purchase of facilities. The report shall include an assessment of the costs and benefits of the various mechanisms. The report shall also make recommendations with regard to future storage of refined petroleum products and contain drafts of any legislative provisions which the Secretary wishes to recommend.

(h) Purchase from stripper well properties

(1) If the President finds that declines in the production of oil from domestic resources pose a threat to national energy security, the President may direct the Secretary to acquire oil from domestic production of stripper well properties for storage in the Strategic Petroleum Reserve. Except as provided in paragraph (2), the Secretary may set such terms and conditions as he deems necessary for such acquisition.

(2) Crude oil purchased by the Secretary pursuant to this subsection shall be by competitive bid. The price paid by the Secretary—

(A) shall take into account the cost of production including costs of reservoir and well maintenance; and

(B) shall not exceed the price that would have been paid if the Secretary had acquired petroleum products of a similar quality on the open market under competitive bid procedures without regard to the source of the petroleum products.

(Pub. L. 94–163, title I, § 160, Dec. 22, 1975, 89 Stat. 888; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96–294, title VIII, §§ 801(a), 802(a), 803, June 30, 1980, 94 Stat. 775, 776; Pub. L. 97–35, title X, § 1033, Aug. 13, 1981, 95 Stat. 618; Pub. L. 97–229, § 4(a)(1), (b)(2)(C), Aug. 3, 1982, 96 Stat. 250, 252; Pub. L. 99–58, title I, §§ 102(b), 103(b)(1), July 2, 1985, 99 Stat. 103, 104; Pub. L. 99–88, title I, § 100, Aug. 15, 1985, 99 Stat. 342; Pub. L. 99–272, title VII, § 7102, Apr. 7, 1986, 100 Stat. 141; Pub. L. 99–509, title III, § 3202, Oct. 21, 1986, 100 Stat. 1889; Pub. L. 101–383, §§ 4(b), (c), 5(a), (b)(3), 7, Sept. 15, 1990, 104 Stat. 728, 729, 734; Pub. L. 101–548, § 1, Nov. 14, 1990, 104 Stat. 2398; Pub. L. 102–486, title XIV, § 1404(a), (b)(2), Oct. 24, 1992, 106 Stat. 2994, 2995.)

REFERENCES IN TEXT

The Impoundment Control Act of 1974, referred to in subsec. (c)(1)(D)(ii), is title X of Pub. L. 93–344, July 12, 1974, 88 Stat. 332, as amended, which is classified principally to chapter 17B (§ 681 et seq.) of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 681 of Title 2 and Tables.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102–486, § 1405, redesignated cls. (i) to (iii) as pars. (A) to (C), respectively, and struck out former par. (A) designation after ''(2)''.

Subsec. (h). Pub. L. 102–486, § 1404(a), added subsec. (h).

1990—Subsec. (c)(3). Pub. L. 101–383, § 4(b)(1), substituted ''fiscal year 1994'' for ''fiscal years 1988 and 1989'' and ''1,000,000,000'' for ''at least 750,000,000''.

Subsec. (d)(1)(A). Pub. L. 101–383, § 4(c), inserted ''Government owned facilities of'' after ''within''.

Subsec. (d)(1)(B). Pub. L. 101–383, § 4(b)(2), inserted before period at end ''and the Secretary has amended the Strategic Petroleum Reserve Plan as required by section 6239(j) of this title''.

Subsec. (d)(4). Pub. L. 101–383, § 5(b)(3), added par. (4).

Subsec. (f). Pub. L. 101–383, § 5(a), added subsec. (f).

Subsec. (g). Pub. L. 101–548 inserted ''with regard to future storage of refined petroleum products and'' after ''recommendations'' in par. (7).

Pub. L. 101–383, § 7, added subsec. (g).

1986—Subsec. (c)(3). Pub. L. 99–509, § 3202(a), substituted ''fiscal year 1987 and continuing through fiscal years 1988 and 1989'' for ''fiscal year 1986 and continuing through fiscal years 1987 and 1988'', ''750,000,000 barrels'' for ''527,000,000 barrels'', and ''at the highest practicable fill rate achievable, subject to the availability of appropriated funds'' for ''at a level sufficient to assure a minimum average annual fill-rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution''.

Pub. L. 99–272, § 7102(a), added par. (3).

Subsec. (d)(1)(A). Pub. L. 99–509, § 3202(b)(1), substituted ''750,000,000 barrels'' for ''527,000,000 barrels''.

Pub. L. 99–272, § 7102(b)(1), substituted ''527,000,000 barrels'' for ''500,000,000 barrels''.

Subsec. (d)(1)(B). Pub. L. 99–509, § 3202(b)(2), substituted ''75,000 barrels'' for ''100,000 barrels'', and substituted a period for ''; or''.

Subsec. (d)(1)(C). Pub. L. 99–509, § 3202(b)(3), struck out subpar. (C) which read as follows: ''acquisition, transportation, and injection activities for the Reserve are being undertaken, beginning in fiscal year 1986 and continuing through fiscal years 1987 and 1988 until the quantity of crude oil in storage within the Reserve is at least 527,000,000 barrels, at a level sufficient to assure that petroleum products in storage in the Reserve will be increased at a minimum annual average rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution''.

Pub. L. 99–272, § 7102(b)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''the fill rate is sufficient to attain a level of 500,000,000 barrels by the end of the fiscal year during which the fill rate falls below the rate established in (B).''

1985—Subsec. (d)(1)(C). Pub. L. 99–88 added subpar. (C).

Subsec. (d)(3). Pub. L. 99–58, § 103(b)(1), added par. (3).

Subsec. (e)(1)(B). Pub. L. 99–58, § 102(b)(1), (2), inserted ''and'' at end of cl. (i), inserted a period following ''to the Congress'', and struck out ''in accordance with section 6422 of this title, together with a request for a suspension of such provisions; and'' in cl. (ii), and struck out cl. (iii) which directed that provisions of subsecs. (c) and (d) of this section would not apply if a Presidential request for the suspension of such provisions was approved by a resolution of each House of Congress within 60 days of continuous session after the date of its transmittal in accordance with provisions of section 6422 of this title applicable to energy conservation contingency plans.

Subsec. (e)(2). Pub. L. 99–58, § 102(b)(3), substituted ''may become effective on the day the finding is transmitted to the Congress and shall terminate nine months thereafter or on such earlier date as is specified in such finding'' for ''shall take effect on the date on which a resolution approving that request is adopted by the second House to have so approved that request and shall terminate 9 months thereafter, or such earlier date as is specified in the request transmitted under paragraph (1)(B)(ii)''.

Subsec. (e)(3), (4). Pub. L. 99–58, § 102(b)(3), (4), redesignated par. (4) as (3). Former par. (3), which related to application of section 6422 of this title for purposes of par. (1)(B), was struck out.

1982—Subsec. (c). Pub. L. 97–229, § 4(a)(1), substituted provisions directing the President to fill the Strategic Petroleum Reserve with petroleum products at a level sufficient to assure an increase at an annual rate of at least the minimum required fill rate, 300,000 barrels per day, until the quantity of petroleum products stored is at least 500,000,000 barrels, allowing for a lower minimum required fill rate of 220,000 barrels per day if the President finds that compliance with the 300,000 barrels per day rate would not be in the national interest, specifying the effective period of such a Presidential finding, authorizing a higher minimum required rate than the 220,000 barrels per day if funds are available in any fiscal year after fiscal year 1982, making the Impoundment Control Act of 1974 applicable to funds available under section 6247(b) and (e) of this title, and providing that, after the Strategic Petroleum Reserve reaches 500,000,000 barrels, the President shall seek to

fill the Reserve at an annual rate of at least 300,000 barrels per day of petroleum products until the Reserve reaches 750,000,000 barrels for provisions directing the President to seek to fill the Strategic Petroleum Reserve with crude oil at a level sufficient to assure that crude oil in storage will be increased at an average annual rate of at least 300,000 barrels per day until the Reserve is at least 750,000,000 barrels.

Subsec. (e)(4). Pub. L. 97–229, § 4(b)(2)(C), substituted ''petroleum product'' for ''crude oil''.

1981—Subsec. (c). Pub. L. 97–35 substituted provisions respecting fill operation at a rate of 300,000 barrels per day for provisions respecting fill operation at a rate of 100,000 barrels per day.

1980—Subsec. (c). Pub. L. 96–294, § 801(a), added subsec. (c).

Subsec. (d). Pub. L. 96–294, § 802(a), added subsec. (d).

Subsec. (e). Pub. L. 96–294, § 803, added subsec. (e).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 4(a)(2) of Pub. L. 97–229 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect July 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1038 of title X of Pub. L. 97–35 provided that: ''The provisions of this title [enacting sections 6247, 8341, and 8484 of this title, amending this section and sections 6245, 6246, 6831 to 6833, 6835, 6837 to 6839, 8372, 8421, 8422, and 8803 of this title, repealing sections 6834, 6836 and 8341 of this title, and enacting provisions set out as notes under sections 6201, 6231, 6247, 7270, and 8341 of this title, section 3620 of Title 12, Banks and Banking, and section 719e of Title 15, Commerce and Trade] shall take effect on the date of enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 801(b) of Pub. L. 96–294 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [June 30, 1980], and shall apply with respect to the entirety of fiscal year 1981 (and each fiscal year thereafter).''

Section 802(b) of Pub. L. 96–294 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 1980.''

SUSPENSION OF TEST PROGRAM REQUIREMENTS DURING FISCAL YEAR 1994

Pub. L. 103–138, title II, Nov. 11, 1993, 107 Stat. 1406, provided in part that requirements of subsec. (g) of this section would not apply in fiscal year 1994.

STUDY AND REPORT ON OIL LEASING AND OTHER ARRANGEMENTS TO FILL SPR TO ONE BILLION BARRELS

Pub. L. 101–46, § 2, June 30, 1989, 103 Stat. 132, directed Secretary of Energy to conduct a study on potential financial arrangements, including long-term leasing of crude oil and storage facilities, that could be used to provide additional, alternative means of financing the filling of the Strategic Petroleum Reserve to one billion barrels and directed Secretary to transmit an interim report to Committee on Energy and Natural Resources of Senate and Committee on Energy and Commerce of House of Representatives no later than Oct. 15, 1989, and no later than Feb. 1, 1990, to transmit to such committees a copy of the preliminary written solicitations for proposed alternative financial arrangements to assist in filling the Strategic Petroleum Reserve to one billion barrels and a final report containing findings and conclusions together with a draft of legislative changes necessary to authorize the most significant alternative financial arrangements.

EXCHANGE OF AGRICULTURAL PRODUCTS FOR CRUDE OIL TO BE DELIVERED TO STRATEGIC PETROLEUM RESERVE

Pub. L. 99–190, § 101(d) [title II], Dec. 19, 1985, 99 Stat. 1224, 1254, provided that: ''Notwithstanding any other provision of law, the Secretary of Agriculture, at the request of the Secretary of Energy, may exchange agricultural products owned by the Commodity Credit Corporation for crude oil to be delivered to the Strategic Petroleum Reserve: *Provided*, That the Secretary of Energy shall approve the quantity, quality, delivery method, scheduling, market value and other aspects of the exchange of such agricultural products: *Provided further*, That if the volume of agricultural products to be exchanged has a value in excess of the market value of the crude oil acquired by such exchange, then the Secretary of Agriculture shall require as part of the terms and conditions of the exchange that the party or entity providing such crude oil shall agree to purchase, within six months following the exchange, current crop commodities or value-added food products from United States producers or processors in an amount equal to at least one-half the difference between the value of the commodities received in exchange and the market value of the crude oil acquired for the Strategic Petroleum Reserve.''

ALLOCATION TO STRATEGIC PETROLEUM RESERVE OF LOWER TIER CRUDE OIL AND FEDERAL ROYALTY OIL; PROCEDURES APPLICABLE, AUTHORITIES, ETC.

Section 805 of Pub. L. 96–294 provided that:

''(a)(1) In order to carry out the requirement of the amendment made by section 801 of this Act [amending this section and enacting provision set out as a note above] and to carry out the policies and objectives established in sections 151 and 160(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6231 and 6240(b)(1)) the President shall, within 60 days after the date of the enactment of this Act [June 30, 1980], promulgate and make effective an amendment to the provisions of the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 753(a)] relating to entitlements, which has the same effect as allocating lower tier crude oil to the Government for storage in the Strategic Petroleum Reserve. Such amendment shall not apply with respect to crude oil purchased after September 30, 1981, for storage in such reserve.

''(2) The authority provided by this subsection shall be in addition to, and shall not be deemed to limit, any other authority available to the President under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or any other law.

''(3) The President or his delegate may promulgate and make effective rules or orders to implement this subsection without regard to the requirements of section 501 of the Department of Energy Organization Act [42 U.S.C. 7191] or any other law or regulation specifying procedural requirements.

''(b) In addition to the requirement under subsection (a), the President may direct that—

''(1) all or any portion of Federal royalty oil be placed in storage in the Reserve,

''(2) all or any portion of Federal royalty oil be exchanged, directly or indirectly, for other crude oil for storage in the Reserve, or

''(3) all or any portion of the proceeds from the sales of Federal royalty oil be transferred to the account established under subsection (c) for use for the purchase of crude oil for the Reserve, as provided in subsection (c).

''(c)(1) Any proceeds—

''(A) from the sale of entitlements received by the Government under the amendment to the regulation made under subsection (a), and

''(B) to the extent provided in subsection (b), from the sale of Federal royalty oil,

shall be deposited in a special account which the Secretary of the Treasury shall establish on the books of the Treasury of the United States.

''(2)(A) Subject to the provisions of any Act enacted pursuant to section 660 of the Department of Energy

Organization Act [42 U.S.C. 7270], such account shall be available (except as provided in subparagraph (B)) for use by the Secretary of Energy, without fiscal year limitation, for the purchase of crude oil for the Strategic Petroleum Reserve, to the extent provided in advance in appropriation Acts.

''(B) Amounts in such account attributable to the proceeds from the sale of entitlements under the amendment to the regulation under subsection (a) are hereby appropriated for fiscal year 1981 for acquisition of crude oil for the Strategic Petroleum Reserve pursuant to subsection (a).

''(d) For purposes of this section—

''(1) the terms 'entitlements', 'crude oil', and 'allocation' shall have the same meaning as those terms have as used in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] (and the regulation thereunder);

''(2) the term 'lower tier crude oil' means crude oil which is subject to the price ceiling established under section 212.73 of title 10, Code of Federal Regulations;

''(3) the term 'Federal royalty oil' means crude oil which the United States is entitled to receive in kind as royalties from production on Federal land (as such term is defined in section 3(10) of the Energy Policy and Conservation Act (42 U.S.C. 6202(10)); and

''(4) the term 'proceeds from the sale of Federal royalty oil' means that portion of the amounts deposited into the Treasury of the United States from the sale of Federal royalty oil which is not otherwise required to be disposed of (other than as miscellaneous receipts) pursuant to (A) the provisions of section 35 of the Act of February 25, 1920, as amended (41 Stat. 450; 30 U.S.C. 191), commonly known as the Mineral Lands Leasing Act, or (B) the provisions of any other law.''

RATE OF FILL OF STRATEGIC PETROLEUM RESERVE

Pub. L. 96–514, title II, Dec. 12, 1980, 94 Stat. 2976, provided in part: ''That the President shall immediately seek to undertake, and thereafter continue, crude oil acquisition, transportation, and injection activities at a level sufficient to assure that crude oil storage in the Strategic Petroleum Reserve will be increased to an average annual rate of at least 300,000 barrels per day or a sustained average annual daily rate of fill which would fully utilize appropriated funds: *Provided*, That the requirements of the preceding provision shall be in addition to the provisions of title VIII of the Energy Security Act [title VIII of Pub. L. 96–294, which amended this section and section 7430 of Title 10, Armed Forces, and enacted provisions set out as a note above] and shall not affect such provisions of the Energy Security Act in any way.''

EX. ORD. NO. 12231. STRATEGIC PETROLEUM RESERVE

Ex. Ord. No. 12231, Aug. 4, 1980, 45 F.R. 52139, provided: By the authority vested in me as President of the United States of America by Title VIII of the Energy Security Act (Public Law 96–294) [title VIII of Pub. L. 96–294, which amended this section and section 7430 of Title 10, Armed Forces, and enacted provisions set out as a note above] and by Section 301 of Title 3 of the United States Code, and in order to meet the goals and requirements for the strategic petroleum reserve, it is hereby ordered as follows:

1–101. The functions vested in the President by Section 160(c) of the Energy Policy and Conservation Act, as amended, are delegated to the Secretary of Energy (42 U.S.C. 6240(c); see Section 801 of the Energy Security Act).

1–102. The functions vested in the President by Section 7430(k) of Title 10 of the United States Code are delegated to the Secretary of Energy (see Section 804(b) of the Energy Security Act).

1–103. The functions vested in the President by Section 805(a) of the Energy Security Act [section 805(a) of Pub. L. 96–294, set out as a note above] are, consistent with Section 2 of Executive Order No. 11790, as amended [set out as a note under section 761 of Title 15, Commerce and Trade], delegated to the Secretary of Energy.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6234, 6239, 6247, 6249a of this title.

§ 6241. Drawdown and distribution of Reserve

(a) Power of Secretary

The Secretary may drawdown and distribute the Reserve only in accordance with the provisions of this section.

(b) Drawdown and distribution of Reserve in accordance with Distribution Plan contained in Strategic Petroleum Reserve Plan

Except as provided in subsections (c), (f), and (g) of this section, no drawdown and distribution of the Reserve may be made except in accordance with the provisions of the Distribution Plan contained in the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 6239(a) of this title.

(c) Drawdown and distribution of Early Storage Reserve in accordance with Distribution Plan contained in Early Storage Reserve Plan

Drawdown and distribution of the Early Storage Reserve may be made in accordance with the provisions of the Distribution Plan contained in the Early Storage Reserve Plan until the Strategic Petroleum Reserve Plan has taken effect pursuant to section 6239(a) of this title.

(d) Presidential finding prerequisite to implementation of Distribution Plan

(1) Neither the Distribution Plan contained in the Strategic Petroleum Reserve Plan nor the Distribution Plan contained in the Early Storage Reserve Plan may be implemented, and no drawdown and distribution of the Reserve or the Early Storage Reserve may be made, unless the President has found that implementation of either such Distribution Plan is required by a severe energy supply interruption or by obligations of the United States under the international energy program.

(2) For purposes of this section, in addition to the circumstances set forth in section 6202(8) of this title, a severe energy supply interruption shall be deemed to exist if the President determines that—

(A) an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration;

(B) a severe increase in the price of petroleum products has resulted from such emergency situation; and

(C) such price increase is likely to cause a major adverse impact on the national economy.

(e) Price levels and allocation procedures

The Secretary may, by rule, provide for the allocation of any petroleum product withdrawn from the Strategic Petroleum Reserve in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such rules.

Such price levels and allocation procedures shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1)[1] of title 15.

(f) Removal or disposal of products in Industrial Petroleum Reserve

The Secretary may permit any importer or refiner who owns any petroleum products stored in the Industrial Petroleum Reserve pursuant to section 6236 of this title to remove or otherwise dispose of such products upon such terms and conditions as the Secretary may prescribe.

(g) Directive to carry out test drawdown

(1) The Secretary shall conduct a continuing evaluation of the Distribution Plan. In the conduct of such evaluation, the Secretary is authorized to carry out test drawdown and distribution of crude oil from the Reserve. If any such test drawdown includes the sale or exchange of crude oil, then the aggregate quantity of crude oil withdrawn from the Reserve may not exceed 5,000,000 barrels during any such test drawdown or distribution.

(2) The Secretary shall carry out such drawdown and distribution in accordance with the Distribution Plan and implementing regulations and contract provisions, modified as the Secretary considers appropriate taking into consideration the artificialities of a test and the absence of a severe energy supply interruption. To meet the requirements of subsections (d) and (e) of section 6239 of this title, the Secretary shall transmit any such modification of the Plan, along with explanatory and supporting material, to both Houses of the Congress no later than 15 calendar days prior to the offering of any crude oil for sale under this subsection.

(3) At least part of the crude oil that is sold or exchanged under this subsection shall be sold or exchanged to or with entities that are not part of the Federal Government.

(4) The Secretary may not sell any crude oil under this subsection at a price less than that which the Secretary determines appropriate and, in no event, at a price less than 90 percent of the sales price, as estimated by the Secretary, of comparable crude oil being sold in the same area at the time the Secretary is offering crude oil for sale in such area under this subsection.

(5) The Secretary may cancel any offer to sell or exchange crude oil as part of any drawdown and distribution under this subsection if the Secretary determines that there are insufficient acceptable offers to obtain such crude oil.

(6)(A) The minimum required fill rate in effect for any fiscal year shall be reduced by the amount of any crude oil drawdown from the Reserve under this subsection during such fiscal year.

(B) In the case of a sale of any crude oil under this subsection, the Secretary shall, to the extent funds are available in the SPR Petroleum Account as a result of such sale, acquire crude oil for the Reserve within the 12-month period beginning after the completion of the sale. Such acquisition shall be in addition to any acquisition of crude oil for the Reserve required as part of a fill rate established by any other provision of law.

(7) Rules, regulations, or orders issued in order to carry out this subsection which have the applicability and effect of a rule as defined in section 551(4) of title 5 shall not be subject to the requirements of subchapter II of chapter 5 of such title or to section 6393 of this title.

(8) The Secretary shall transmit to both Houses of the Congress a detailed explanation of the drawdown and distribution carried out under this subsection. Such explanation may be a part of any report made to the President and the Congress under section 6245 of this title.

(h) Prevention or reduction of adverse impact of severe domestic energy supply interruptions

(1) If the President finds that—

(A) a circumstance, other than those described in subsection (d) of this section, exists that constitutes, or is likely to become, a domestic or international energy supply shortage of significant scope or duration; and

(B) action taken under this subsection would assist directly and significantly in preventing or reducing the adverse impact of such shortage,

then the Secretary may, subject to the limitations of paragraph (2), draw down and distribute the Strategic Petroleum Reserve.

(2) In no case may the Reserve be drawn down under this subsection—

(A) in excess of an aggregate of 30,000,000 barrels with respect to each such shortage;

(B) for more than 60 days with respect to each such shortage;

(C) if there are fewer than 500,000,000 barrels of petroleum product stored in the Reserve; or

(D) below the level of an aggregate of 500,000,000 barrels of petroleum product stored in the Reserve.

(3) During any period in which there is a drawdown and distribution of the Reserve in effect under this subsection, the Secretary shall transmit a monthly report to the Congress containing an account of the drawdown and distribution of petroleum products under this subsection and an assessment of its effect.

(4) In no case may the drawdown under this subsection be extended beyond 60 days with respect to any domestic energy supply shortage.

(i) Exchange of withdrawn products

Notwithstanding any other law, the President may permit any petroleum products withdrawn from the Strategic Petroleum Reserve in accordance with this section to be sold and delivered for refining or exchange outside of the United States, in connection with an arrangement for the delivery of refined petroleum products to the United States.

(Pub. L. 94–163, title I, §161, Dec. 22, 1975, 89 Stat. 888; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 99–58, title I, §103(a), (b)(2), July 2, 1985, 99 Stat. 103, 104; Pub. L. 101–383, §§3(b), 8, 10, Sept. 15, 1990, 104 Stat. 727, 735; Pub. L. 102–486, title XIV, §1401, Oct. 24, 1992, 106 Stat. 2993.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (e), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expira-

[1] See References in Text note below.

tion of the President's authority under that section on Sept. 30, 1981.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–486, § 1401(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1)(A). Pub. L. 102–486, § 1401(2), inserted ''or international'' after ''domestic''.

1990—Subsec. (g)(1). Pub. L. 101–383, § 8, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In order to evaluate the implementation of the Distribution Plan, the Secretary shall, commencing within 180 days after July 2, 1985, carry out a test drawdown and distribution under this subsection through the sale or exchange of approximately 1,100,000 barrels of crude oil from the Reserve. The requirement of this paragraph shall not apply if the President determines, within the 180-day period described in the preceding sentence, that implementation of the Distribution Plan is required by a severe energy supply interruption or by obligations of the United States under the international energy program.''

Subsec. (h). Pub. L. 101–383, § 3(b), added subsec. (h).

Subsec. (i). Pub. L. 101–383, § 10, added subsec. (i).

1985—Subsec. (b). Pub. L. 99–58, § 103(b)(2), inserted reference to subsec. (g) of this section.

Subsec. (g). Pub. L. 99–58, § 103(a), added subsec. (g).

1978—Subsecs. (a), (e), (f). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 6240, 6247 of this title.

§ 6242. Coordination with import quota system

No quantitative restriction on the importation of any petroleum product into the United States imposed by law shall apply to volumes of any such petroleum product imported into the United States for storage in the Reserve.

(Pub. L. 94–163, title I, § 162, Dec. 22, 1975, 89 Stat. 889.)

§ 6243. Records and accounts

(a) Preparation and maintenance

The Secretary may require any person to prepare and maintain such records or accounts as the Secretary, by rule, determines necessary to carry out the purposes of this part.

(b) Audit of operations of storage facility

The Secretary may audit the operations of any storage facility in which any petroleum product is stored or required to be stored pursuant to the provisions of this part.

(c) Access to and inspection of records or accounts and storage facilities

The Secretary may require access to, and the right to inspect and examine, at reasonable times, (1) any records or accounts required to be prepared or maintained pursuant to subsection (a) of this section and (2) any storage facilities subject to audit by the United States under the authority of this part.

(Pub. L. 94–163, title I, § 163, Dec. 22, 1975, 89 Stat. 889; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6244. Report on development of Naval Petroleum Reserve Number 4

The Secretary shall, in cooperation and consultation with the Secretary of the Navy and the Secretary of the Interior, develop and submit to the Committees on Interior and Insular Affairs of the Senate and House of Representatives within 180 days after December 22, 1975, a written report recommending procedures for the exploration, development, and production of Naval Petroleum Reserve Number 4. Such report shall include recommendations for protecting the economic, social, and environmental interests of Alaska Natives residing within the Naval Petroleum Reserve Number 4 and analyses of arrangements which provide for (1) participation by private industry and private capital, and (2) leasing to private industry. The Secretary of the Navy and the Secretary of the Interior shall cooperate fully with one another and with the Secretary; the Secretary of the Navy shall provide to the Secretary and Secretary of the Interior all relevant data on Naval Petroleum Reserve Number 4 in order to assist the Secretary in the preparation of such report.

(Pub. L. 94–163, title I, § 164, Dec. 22, 1975, 89 Stat. 889; Pub. L. 94–258, title I, § 105(a), Apr. 5, 1976, 90 Stat. 305; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

1976—Pub. L. 94–258 substituted ''to the Committees on Interior and Insular Affairs of the Senate and House of Representatives'' for ''to the Congress''.

CHANGE OF NAME

Committee on Interior and Insular Affairs of Senate abolished and replaced by Committee on Energy and Natural Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

Committee on Interior and Insular Affairs of House of Representatives changed to Committee on Natural Resources of House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives changed to Committee on Resources of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 6245. Reports by Secretary to Congress; contents

(a) The Secretary shall report to the President and the Congress, not later than one year after the transmittal of the Strategic Petroleum Reserve Plan to the Congress and each year thereafter, on all actions taken to implement this part. Such report shall include—

(1) a detailed statement of the status of the Strategic Petroleum Reserve, including—

(A) an estimate of the final capacity of the Reserve and the scheduled annual fill rate for achieving such capacity;

(B) the scheduled quarterly fill rate for the 12-month period beginning on the date on which such report is transmitted;

(C) the type and quality of crude oil to be acquired for the Reserve pursuant to the schedule described in subparagraph (A);

(D) the schedule of construction of any facilities needed to achieve the final capacity of the Reserve, including a description of the type and location of such facilities and of enhancements and improvements to existing facilities;

(E) an estimate of the cost of acquiring crude oil and constructing facilities necessary to complete the Reserve;

(F) a description of the current distribution plan for using the Reserve, including the method of drawdown and distribution to be utilized; and

(G) an explanation of any changes made in the matters described in subparagraphs (A) through (F) since the transmittal of the previous report under this subsection;

(2) a summary of the actions taken to develop and implement the Strategic Petroleum Reserve Plan and the Early Storage Reserve Plan;

(3) an analysis of the impact and effectiveness of such actions on the vulnerability of the United States to interruption in supplies of petroleum products;

(4) a summary of existing problems with respect to further implementation of the Early Storage Reserve Plan and the Strategic Petroleum Reserve Plan; and

(5) any recommendations for supplemental legislation deemed necessary or appropriate by the Secretary to implement the provisions of this part.

(b)(1) On or before the fifteenth day of the second calendar quarter which begins after August 13, 1981, and every calendar quarter thereafter, the Secretary shall report to the Congress on activities undertaken with respect to the Strategic Petroleum Reserve under the amendments made by the Strategic Petroleum Reserve Amendments Act of 1981, including—

(A) the amounts of petroleum products stored in the Reserve, under contract and in transit at the end of the previous calendar quarter;

(B) the projected fill rate for the Strategic Petroleum Reserve for the then current calendar quarter and the previous calendar quarter;

(C) the average price of the petroleum products acquired during the previous calendar quarter;

(D) existing and projected Strategic Petroleum Reserve storage capacity and plans to accelerate the acquisition or construction of such capacity;

(E) an analysis of any existing or anticipated problems associated with acquisition, transportation, and storage of petroleum products in the Reserve and with the expansion of storage capacity for the Reserve; and

(F) the amount of funds obligated by the Secretary from the SPR Petroleum Account, as well as other funds available for the Reserve, during the previous calendar quarter and in total under the amendments made by such Act.

(2) The first report submitted under paragraph (1) shall include—

(A) a detailed statement on the planned use of the SPR Petroleum Account as well as other funds available for the Strategic Petroleum Reserve;

(B) a description of the current Strategic Petroleum Reserve Plan, including any proposed or anticipated amendments to the Plan; and

(C) detailed plans of the Secretary for acquisition or new construction of storage and related facilities.

(Pub. L. 94–163, title I, §165, Dec. 22, 1975, 89 Stat. 889; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 97–35, title X, §1035(a), Aug. 13, 1981, 95 Stat. 620; Pub. L. 99–509, title III, §3203, Oct. 21, 1986, 100 Stat. 1890.)

REFERENCES IN TEXT

The Strategic Petroleum Reserve Amendments Act of 1981 and such Act, referred to in subsec. (b)(1), mean subtitle C of title X of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 618, which enacted section 6247 of this title, amended sections 6240, 6245, and 6246 of this title, and enacted provisions set out as notes under sections 6201, 6231, 6240, and 6247 of this title. For complete classification of this Act to the Code, see Short Title of 1981 Amendment note set out under section 6201 of this title and Tables.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–509 amended par. (1) generally, inserting ", including" in introductory text and adding subpars. (A) to (G).

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–619 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

REPORTS TO CONGRESS ON PETROLEUM SUPPLY INTERRUPTIONS

Pub. L. 97–229, §6, Aug. 3, 1982, 96 Stat. 253, provided that:

"(a) IMPACT ANALYSIS.—(1) The Secretary of Energy shall analyze the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during any substantial reduction in the amount of petroleum products available to the United States. In making such analysis, the Secretary of Energy may consult with the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, and the heads of other appropriate Federal agencies. Such analysis shall—

"(A) examine the equity and efficiency of such reliance,

"(B) distinguish between the impacts of such reliance on various categories of business (including small business and agriculture) and on households of different income levels,

"(C) specify the nature and administration of monetary and fiscal policies that would be followed including emergency tax cuts, emergency block grants, and emergency supplements to income maintenance programs, and

"(D) describe the likely impact on the distribution of petroleum products of State and local laws and regulations (including emergency authorities) affecting the distribution of petroleum products.

Such analysis shall include projections of the effect of the petroleum supply reduction on the price of motor gasoline, home heating oil, and diesel fuel, and on Federal tax revenues, Federal royalty receipts, and State and local tax revenues.

"(2) Within one year after the date of the enactment of this Act [Aug. 3, 1982], the Secretary of Energy shall

submit a report to the Congress and the President containing the analysis required by this subsection, including a detailed step-by-step description of the procedures by which the policies specified in paragraph (1)(C) would be accomplished in an emergency, along with such recommendations as the Secretary of Energy deems appropriate.

''(b) STRATEGIC PETROLEUM RESERVE DRAWDOWN AND DISTRIBUTION REPORT.—The President shall prepare and transmit to the Congress, at the time he transmits the drawdown plan pursuant to section 4(c) [section 4(c) of Pub. L. 97–229, set out as a note under 42 U.S.C. 6234], a report containing—

''(1) a description of the foreseeable situations (including selective and general embargoes, sabotage, war, act of God, or accident) which could result in a severe energy supply interruption or obligations of the United States arising under the international energy program necessitating distributions from the Strategic Petroleum Reserve, and

''(2) a description of the strategy or alternative strategies of distribution which could reasonably be used to respond to each situation described under paragraph (1), together with the theory and justification underlying each such strategy.

The description of each strategy under paragraph (2) shall include an explanation of the methods which would likely be used to determine the price and distribution of petroleum products from the Reserve in any such distribution, and an explanation of the disposition of revenues arising from sales of any such petroleum products under the strategy.

''(c) REGIONAL RESERVE REPORT.—The President or his delegate shall submit to the Congress no later than December 31, 1982, a report regarding the actions taken to comply with the provisions of section 157 of the Energy Policy and Conservation Act (42 U.S.C. 6237). Such report shall include an analysis of the economic benefits and costs of establishing Regional Petroleum Reserves, including—

''(1) an assessment of the ability to transport petroleum products to refiners, distributors, and end users within the regions specified in section 157(a) of such Act;

''(2) the comparative costs of creating and operating Regional Petroleum Reserves for such regions as compared to the costs of continuing current plans for the Strategic Petroleum Reserve; and

''(3) a list of potential sites for Regional Petroleum Reserves.

''(d) STRATEGIC ALCOHOL FUEL RESERVE REPORT.—The Secretary of Energy shall, in consultation with the Secretary of Agriculture, prepare and transmit to the Congress no later than December 31, 1982, a study of the potential for establishing a Strategic Alcohol Fuel Reserve.

''(e) MEANING OF TERMS.—As used in this section, the terms 'international energy program', 'petroleum product', 'Reserve', 'severe energy supply interruption', and 'Strategic Petroleum Reserve' have the meanings given such terms in sections 3 and 152 of the Energy Policy and Conservation Act (42 U.S.C. 6202 and 6232).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6241 of this title.

§ 6246. Authorization of appropriations

There are authorized to be appropriated—

(1) such funds as are necessary to develop and implement the Early Storage Reserve Plan (including planning, administration, acquisition, and construction of storage and related facilities) and as are necessary to permit the acquisition of petroleum products for storage in the Early Storage Reserve or, if the Strategic Petroleum Reserve Plan has become effective under section 6239(a) of this title, for storage in the Strategic Petroleum Reserve in the minimum volume specified in section 6234(a) or 6235(a)(2) of this title, whichever is applicable;

(2) $1,100,000,000 to remain available until expended to carry out the provisions of this part to develop the Strategic Petroleum Reserve Plan and to implement such plan which has taken effect pursuant to section 6239(a) of this title, including planning, administration, and acquisition and construction of storage and related facilities, but no funds are authorized to be appropriated under this paragraph for the purchase of petroleum products for storage in the Strategic Petroleum Reserve;

(3) such funds for the fiscal year ending September 30, 1978, not to exceed $1,210,000,000, as are necessary to permit the acquisition and storage of petroleum products in the Strategic Petroleum Reserve, in accordance with the storage schedule set forth in the Strategic Petroleum Reserve Plan then in effect in excess of the minimum volume specified in section 6234(a) of this title, but not in excess of 500,000,000 barrels; and

(4) for the fiscal year ending September 30, 1982, not to exceed $260,000,000 to carry out the provisions of this part, except—

(A) acquisition, transportation, and injection of petroleum products for the Reserve, and

(B) the carrying out of any drawdown and distribution of the Reserve.

(Pub. L. 94–163, title I, § 166, Dec. 22, 1975, 89 Stat. 890; Pub. L. 95–70, § 4, July 21, 1977, 91 Stat. 277; Pub. L. 97–35, title X, § 1034(b), Aug. 13, 1981, 95 Stat. 619.)

AMENDMENTS

1981—Par. (4). Pub. L. 97–35 added par. (4).
1977—Par. (3). Pub. L. 95–70 added par. (3).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

§ 6247. SPR Petroleum Account

(a) Establishment

The Secretary of the Treasury shall establish in the Treasury of the United States an account to be known as the ''SPR Petroleum Account'' (hereinafter in this section referred to as the ''Account'').

(b) Obligation of funds for acquisition, transportation, and injection of petroleum products into SPR

Amounts in the Account may be obligated by the Secretary of Energy for the acquisition, transportation, and injection of petroleum products into the Strategic Petroleum Reserve, and the drawdown and delivery of petroleum products from the Reserve—

(1) in the case of fiscal year 1982, in an aggregate amount, not to exceed $3,900,000,000, as may be provided in advance in appropriation Acts;

(2) in the case of any fiscal year after fiscal year 1982, subject to section 7270 of this title, in such aggregate amounts as may be appropriated in advance in appropriation Acts; and

(3) in the case of any fiscal year, notwithstanding section 7270 of this title, in an aggregate amount equal to the aggregate amount of the receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, or from the sale of petroleum products under section 6240(f) of this title.

Funds available to the Secretary of Energy for obligation under this subsection may remain available without fiscal year limitation.

(c) Provision and deposit of funds

The Secretary of the Treasury shall provide and deposit into the Account such sums as may be necessary to meet obligations of the Secretary of Energy under subsection (b) of this section.

(d) Off-budgeting procedures

The Account, the deposits and withdrawals from the Account, and the transactions, receipts, obligations, outlays associated with such deposits and withdrawals (including petroleum product purchases and related transactions), and receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, and from the sale of petroleum products under section 6240(f) of this title—

(1) shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States; and

(2) shall not be deemed to be budget authority, spending authority, budget outlays, or Federal revenues for purposes of title III of Public Law 93–344, as amended [2 U.S.C. 631 et seq.].

(e) Interim storage facilities

(1) Except as provided in paragraph (2), nothing in this part shall be construed to limit the Account from being used to meet expenses relating to interim storage facilities for the storage of petroleum products for the Strategic Petroleum Reserve.

(2) In any fiscal year, amounts in the Account may not be obligated for expenses relating to interim storage facilities in excess of 10 percent of the total amounts in the Account obligated in such fiscal year. If the amount obligated in any fiscal year for interim storage expenses is less than the amount of the 10-percent limit under the preceding sentence for that fiscal year, then the amount of the 10-percent limit applicable in the following fiscal year shall be increased by the amount by which the limit exceeded the amount obligated for such expenses.

(Pub. L. 94–163, title I, §167, as added Pub. L. 97–35, title X, §1034(a)(1), Aug. 13, 1981, 95 Stat. 619; amended Pub. L. 97–229, §4(b)(2)(A), Aug. 3, 1982, 96 Stat. 251; Pub. L. 99–58, title I, §103(b)(3), (4), July 2, 1985, 99 Stat. 104; Pub. L. 101–383, §5(b)(1), (2), Sept. 15, 1990, 104 Stat. 729; Pub. L. 102–486, title XIV, §1404(b)(1), Oct. 24, 1992, 106 Stat. 2995.)

REFERENCES IN TEXT

Public Law 93–344, as amended, referred to in subsec. (d)(2), is Pub. L. 93–344, July 12, 1974, 88 Stat. 297, as amended, known as the Congressional Budget and Impoundment Control Act of 1974. Title III of that Act is classified generally to subchapter I (§631 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–486 substituted ''under subsection (g)'' for ''subsection (g)''.

1990—Subsec. (b)(3). Pub. L. 101–383, §5(b)(1), inserted before period at end '', or from the sale of petroleum products under section 6240(f) of this title''.

Subsec. (d). Pub. L. 101–383, §5(b)(2), inserted '', and from the sale of petroleum products under section 6240(f) of this title'' after ''subsection (g) of such section''.

1985—Subsec. (b)(3). Pub. L. 99–58, §103(b)(3), inserted '', including a drawdown and distribution carried out under subsection (g) of such section'' after ''section 6241 of this title''.

Subsec. (d). Pub. L. 99–58, §103(b)(4), inserted '', including a drawdown and distribution carried out subsection (g) of such section'' after ''section 6241 of this title'' in provisions preceding par. (1).

1982—Subsec. (e). Pub. L. 97–229 added subsec. (e).

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

ACQUISITION, TRANSPORTATION, AND INJECTION OF PETROLEUM PRODUCTS FOR SPR; APPLICABILITY OF SUBSEC. (d)

Section 1034(c) of Pub. L. 97–35 provided that: ''The provisions of section 167(d) of such Act, as added by subsection (a) of this section [subsec. (d) of this section], shall apply with respect to the outlays associated with unexpended balances of appropriations made available and obligated as of the end of fiscal year 1981 for the acquisition, transportation, and injection of petroleum products for the Strategic Petroleum Reserve to the same extent and manner as such provisions apply with respect to withdrawals from the SPR Petroleum Account.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6240 of this title.

PART C—AUTHORITY TO CONTRACT FOR PETROLEUM PRODUCT NOT OWNED BY UNITED STATES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6232, 6234, 6239 of this title.

§ 6249. Contracting for petroleum product and facilities

(a) In general

Subject to the other provisions of this part, the Secretary may contract—

(1) for storage, in otherwise unused Strategic Petroleum Reserve facilities, of petroleum product not owned by the United States; and

(2) for storage, in storage facilities other than those of the Reserve, of petroleum prod-

uct either owned or not owned by the United States.

(b) Conditions

(1) Petroleum product stored pursuant to such a contract shall, until the expiration, termination, or other conclusion of the contract, be a part of the Reserve and subject to the Secretary's authority under part B of this subchapter.

(2) The Secretary may enter into a contract for storage of petroleum product under subsection (a) of this section only if—

(A) the Secretary determines (i) that entering into one or more contracts under such subsection would achieve benefits comparable to the acquisition of an equivalent amount of petroleum product, or an equivalent volume of storage capacity, for the Reserve under part B of this subchapter, and (ii) that, because of budgetary constraints, the acquisition of an equivalent amount of petroleum product or volume of storage space for the Reserve cannot be accomplished under part B of this subchapter; and

(B) the Secretary notifies each House of the Congress of such determination and includes in such notification the same information required under section 6234(e) of this title with regard to storage and related facilities proposed to be included, or petroleum product proposed to be stored, in the Reserve.

(3) A contract entered into under subsection (a) of this section shall not limit the discretion of the President or the Secretary to conduct a drawdown and distribution of the Reserve.

(4) A contract entered into under subsection (a) of this section shall include a provision that the obligation of the United States to make payments under the contract in any fiscal year is subject to the availability of appropriations.

(c) Charge for storage

The Secretary may store petroleum product pursuant to a contract entered into under subsection (a)(1) of this section with or without charge or may pay a fee for its storage.

(d) Duration

Contracts entered into under subsection (a) of this section may be of such duration as the Secretary considers necessary or appropriate.

(e) Binding arbitration

The Secretary may agree to binding arbitration of disputes under any contract entered into under subsection (a) of this section.

(f) Availability of funds

The Secretary may utilize such funds as are available in the SPR Petroleum Account to carry out the activities described in subsection (a) of this section, and may obligate and expend such funds to carry out such activities, in advance of the receipt of petroleum products.

(Pub. L. 94–163, title I, §171, as added Pub. L. 101–383, §6(a)(4), Sept. 15, 1990, 104 Stat. 729; amended Pub. L. 102–486, title XIV, §1403, Oct. 24, 1992, 106 Stat. 2994.)

PRIOR PROVISIONS

A prior section 171 of Pub. L. 94–163 was renumbered section 181 and is classified to section 6251 of this title.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–486 added subsec. (f).

§ 6249a. Implementation

(a) Amendment to plan not required

An amendment of the Strategic Petroleum Reserve Plan is not required for any action taken under this part.

(b) Fill rate requirement

For purposes of section 6240(d)(1) of this title, any petroleum product stored in the Reserve under this part that is removed from the Reserve at the expiration, termination, or other conclusion of the agreement shall be considered to be part of the Reserve until the beginning of the fiscal year following the fiscal year in which the petroleum product was removed.

(c) Legal status regarding other law

Petroleum product and facilities contracted for under this part have the same status as petroleum product and facilities owned by the United States for all purposes associated with the exercise of the laws of any State or political subdivision thereof.

(d) Return of product

At such time as the petroleum product contracted for under this part is withdrawn from the Reserve upon the expiration, termination, or other conclusion of the contract, such petroleum product (or the equivalent quantity of petroleum product withdrawn from the Reserve pursuant to the contract) shall be deemed, for purposes of determining the extent to which such product is thereafter subject to any Federal, State, or local law or regulation, not to have left the place where such petroleum product was located at the time it was originally committed to a contract under this part.

(Pub. L. 94–163, title I, §172, as added Pub. L. 101–383, §6(a)(4), Sept. 15, 1990, 104 Stat. 730.)

§ 6249b. Contracts for which no implementing legislation is needed

(a) Congressional review

In the case of contracts entered into under this part, and amendments to such contracts, for which no implementing legislation is needed, the Secretary shall transmit each such contract and each such amendment to the Committee on Appropriations and the Committee on Energy and Natural Resources of the Senate and to the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives within 30 days after the signing thereof.

(b) Effective date

(1) Any such contract, and any such amendment, shall not become effective until the end of the 30-day period of continuous session of Congress after the date of such transmittal, except that such contract may become effective without regard to such period if the President determines that such contract is required as a result of a severe energy supply interruption or by obligations of the United States under the international energy program.

(2) For purposes of paragraph (1)—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

(Pub. L. 94–163, title I, §173, as added Pub. L. 101–383, §6(a)(4), Sept. 15, 1990, 104 Stat. 731.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 6249c. Contracts for which implementing legislation is needed

(a) In general

(1) In the case of contracts entered into under this part, and amendments to such contracts, for which implementing legislation will be needed, the Secretary may transmit an implementing bill to both Houses of the Congress.

(2) In the Senate, any such bill shall be considered in accordance with the provisions of this section.

(3) For purposes of this section—

(A) the term ''implementing bill'' means a bill introduced in either House of Congress with respect to one or more contracts or amendments to contracts submitted to the House of Representatives and the Senate under this section and which contains—

(i) a provision approving such contracts or amendments, or both; and

(ii) legislative provisions that are necessary or appropriate for the implementation of such contracts or amendments, or both; and

(B) the term ''implementing revenue bill'' means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(b) Consultation

The Secretary shall consult, at the earliest possible time and on a continuing basis, with each committee of the House and the Senate that has jurisdiction over all matters expected to be affected by legislation needed to implement any such contract.

(c) Effective date

Each contract and each amendment to a contract for which an implementing bill is necessary may become effective only if—

(1) the Secretary, not less than 30 days before the day on which such contract is entered into, notifies the House of Representatives and the Senate of the intention to enter into such a contract and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the contract, the Secretary transmits a report to the House of Representatives and to the Senate containing a copy of the final text of such contract together with—

(A) the implementing bill, and an explanation of how the implementing bill changes or affects existing law; and

(B) a statement of the reasons why the contract serves the interests of the United States and why the implementing bill is required or appropriate to implement the contract; and

(3) the implementing bill is enacted into law.

(d) Rules of Senate

Subsections (e) through (h) of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate but applicable only with respect to the procedure to be followed in the Senate in the case of implementing bills and implementing revenue bills described in subsection (a) of this section, and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(e) Introduction and referral in Senate

(1) On the day on which an implementing bill is transmitted to the Senate under this section, the implementing bill shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

(2) If the Senate is not in session on the day on which such an agreement is submitted, the implementing bill shall be introduced in the Senate, as provided in the[1] paragraph (1), on the first day thereafter on which the Senate is in session.

(3) Such bills shall be referred by the presiding officer of the Senate to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(f) Consideration of amendments to implementing bill prohibited in Senate

(1) No amendments to an implementing bill shall be in order in the Senate, and it shall not be in order in the Senate to consider an implementing bill that originated in the House if such bill passed the House containing any amendment to the introduced bill.

(2) No motion to suspend the application of this subsection shall be in order in the Senate; nor shall it be in order in the Senate for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(g) Discharge in Senate

(1) Except as provided in paragraph (3), if the committee or committees of the Senate to

[1] So in original. The word ''the'' probably should not appear.

which an implementing bill has been referred have not reported it at the close of the 30th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill, and it shall be placed on the appropriate calendar.

(2) A vote on final passage of the bill shall be taken in the Senate on or before the close of the 15th day after the bill is reported by the committee or committees to which it was referred or after such committee or committees have been discharged from further consideration of the bill.

(3) The provisions of paragraphs (1) and (2) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be, subject to subsection (f)(1) of this section, referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate, such committee or committees shall be automatically discharged from further consideration of such bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

(4) For purposes of this subsection, in computing a number of days in the Senate, there shall be excluded any day on which the Senate is not in session.

(h) Floor consideration in Senate

(1) A motion in the Senate to proceed to the consideration of an implementing bill shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing bill, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill shall be limited to not more than one hour to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill is not in order.

(Pub. L. 94–163, title I, §174, as added Pub. L. 101–383, §6(a)(4), Sept. 15, 1990, 104 Stat. 731.)

PART D—EXPIRATION

AMENDMENTS

1990—Pub. L. 101–383, §6(a)(2), Sept. 15, 1990, 104 Stat. 729, redesignated part C as D.

§ 6251. Expiration

Except as otherwise provided in this subchapter, all authority under any provision of this subchapter and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, June 30, 1996, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1996.

(Pub. L. 94–163, title I, §181, formerly §171, as added Pub. L. 99–58, title I, §101(a), July 2, 1985, 99 Stat. 102; amended Pub. L. 101–46, §1(1), June 30, 1989, 103 Stat. 132; Pub. L. 101–262, §2(b), Mar. 31, 1990, 104 Stat. 124; Pub. L. 101–360, §2(b), Aug. 10, 1990, 104 Stat. 421; renumbered §181 and amended Pub. L. 101–383, §§2(2), 6(a)(3), Sept. 15, 1990, 104 Stat. 727, 729; Pub. L. 103–406, title I, §102, Oct. 22, 1994, 108 Stat. 4209.)

CODIFICATION

Words ''(other than a provision of such title amending another law)'' appearing in the original in this section, have been omitted as unnecessary. Such title meant title I of Pub. L. 94–163, which is classified to this subchapter. The provisions of such title that amended other laws are not classified to this subchapter.

AMENDMENTS

1994—Pub. L. 103–406 substituted ''June 30, 1996'' for ''September 30, 1994'' in two places.

1990—Pub. L. 101–383, §2(2), substituted ''September 30, 1994'' for ''September 15, 1990'' in two places.

Pub. L. 101–360 substituted ''September 15, 1990'' for ''August 15, 1990'' in two places.

Pub. L. 101–262 substituted ''August 15, 1990'' for ''April 1, 1990'' in two places.

1989—Pub. L. 101–46 substituted ''April 1, 1990'' for ''June 30, 1989'' in two places.

SUBCHAPTER II—STANDBY ENERGY AUTHORITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6391, 6393, 6394, 6396 of this title.

PART A—GENERAL EMERGENCY AUTHORITIES

§§ 6261 to 6264. Omitted

CODIFICATION

Sections 6261 to 6264 were omitted pursuant to section 6264 of this title.

Section 6261, Pub. L. 94–163, title II, §201, Dec. 22, 1975, 89 Stat. 890; Pub. L. 96–102, title I, §§103(b)(1), (c)(1), 105(a)(1)–(3), (5), Nov. 5, 1979, 93 Stat. 751, 755, 756; H. Res. 549, Mar. 25, 1980, required the President to transmit to Congress energy conservation contingency plans and rationing contingency plans and provided requirements for plans to become effective and for amendment, approval, and implementation of plans.

Section 6262, Pub. L. 94–163, title II, §202, Dec. 22, 1975, 89 Stat. 892; Pub. L. 96–102, title II, §231, Nov. 5, 1979, 93 Stat. 767, provided requirements for energy conservation contingency plans.

Section 6263, Pub. L. 94–163, title II, §203, Dec. 22, 1975, 89 Stat. 892; Pub. L. 96–102, title I, §§103(a), (c)(2), 104,

105(b)(1)–(5), Nov. 5, 1979, 93 Stat. 751, 755, 756, provided requirements for rationing contingency plan, and in subsec. (f) provided that all authority to carry out a plan would expire on same date as authority to issue and enforce rules and orders under the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 et seq.

Section 6264, Pub. L. 94–163, title II, §204, as added Pub. L. 99–58, title I, §104(b), July 2, 1985, 99 Stat. 104, provided that except as provided in section 6263(f) of this title, authority to carry out the provisions of sections 6261 to 6264 of this title and any rule, regulation, or order issued pursuant to such sections expired at midnight, June 30, 1985.

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

§ 6271. International oil allocations

(a) Authority of President to prescribe rules for implementation of obligations of United States relating to international allocation of petroleum products; amounts of allocation and prices; petroleum products subject to rule; term of rule

The President may, by rule, require that persons engaged in producing, transporting, refining, distributing, or storing petroleum products, take such action as he determines to be necessary for implementation of the obligations of the United States under chapters III and IV of the international energy program insofar as such obligations relate to the international allocation of petroleum products. Allocation under such rule shall be in such amounts and at such prices as are specified in (or determined in a manner prescribed by) such rule. Such rule may apply to any petroleum product owned or controlled by any person described in the first sentence of this subsection who is subject to the jurisdiction of the United States, including any petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States. Subject to subsection (b)(2) of this section, such a rule shall remain in effect until amended or rescinded by the President.

(b) Prerequisites to rule taking effect; time rule may be put into effect or remain in effect

(1) No rule under subsection (a) of this section may take effect unless the President—

(A) has transmitted such rule to the Congress;

(B) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the international energy program; and

(C) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

(2) No rule under subsection (b) of this section may be put into effect or remain in effect after the expiration of 12 months after the date such rule was transmitted to Congress under paragraph (1)(A).

(c) Consistency of rule with attainment of objectives specified in section 753(b)(1)[1] of title 15; limitation on authority of officers or agencies of United States

(1) Any rule under this section shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1)[1] of title 15.

(2) No officer or agency of the United States shall have any authority, other than authority under this section, to require that petroleum products be allocated to other countries for the purpose of implementation of the obligations of the United States under the international energy program.

(d) Nonapplicability of export restrictions under other laws

Neither section 6212 of this title nor section 185(u) of title 30 shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.

(e) Prerequisites for effectiveness of rule

No rule under this section may be put into effect unless—

(1) an international energy supply emergency, as defined in the first sentence of section 6272(k)(1) of this title, is in effect; and

(2) the allocation of available oil referred to in chapter III of the international energy program has been activated pursuant to chapter IV of such program.

(Pub. L. 94–163, title II, §251, Dec. 22, 1975, 89 Stat. 894; Pub. L. 97–229, §2(b)(1), Aug. 3, 1982, 96 Stat. 248; Pub. L. 99–58, title I, §104(c)(2), July 2, 1985, 99 Stat. 105.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (c), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

AMENDMENTS

1985—Subsec. (e)(1). Pub. L. 99–58 substituted reference to section 6272(k)(1) for reference to section 6272(*l*)(1).

1982—Subsec. (e). Pub. L. 97–229 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6272. International voluntary agreements

(a) Exclusiveness of section's requirements

Effective 90 days after December 22, 1975, the requirements of this section shall be the sole procedures applicable to—

(1) the development or carrying out of voluntary agreements and plans of action to implement the allocation and information provisions of the international energy program, and

(2) the availability of immunity from the antitrust laws with respect to the development or carrying out of such voluntary agreements and plans of action.

(b) Prescription by Secretary of standards and procedures for developing and carrying out voluntary agreements and plans of action

The Secretary, with the approval of the Attorney General, after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refin-

[1] See References in Text note below.

ing, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the allocation and information provisions of the international energy program.

(c) Requirements for standards and procedures

The standards and procedures prescribed under subsection (b) of this section shall include the following requirements:

(1)(A)(i) Except as provided in clause (ii) or (iii) of this subparagraph, meetings held to develop or carry out a voluntary agreement or plan of action under this subsection shall permit attendance by representatives of committees of Congress and interested persons, including all interested segments of the petroleum industry, consumers, and the public; shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency with respect to meetings to carry out a voluntary agreement or to develop or carry out a plan of action) the public; and shall be initiated and chaired by a regular full-time Federal employee.

(ii) Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons and need not be initiated and chaired by a regular full-time Federal employee.

(iii) The President, in consultation with the Secretary, the Secretary of State, and the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons or that attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or carry out a voluntary agreement or plan of action under this section unless a regular full-time Federal employee is present.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary may impose.

(3) A full and complete record, and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary, and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary, and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.

(d) Participation of Attorney General and Federal Trade Commission in development and carrying out of voluntary agreements and plans of action

(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (j) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented; except that during an international energy supply emergency, the Secretary, subject to approval of the Attorney General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3) of this section. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General

and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e) of this section.

(3) A plan of action may not be approved by the Attorney General under this subsection unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

(e) Monitoring of development and carrying out of voluntary agreements and plans of action by Attorney General and Federal Trade Commission

(1) The Attorney General and the Federal Trade Commission shall monitor the development and carrying out of voluntary agreements and plans of action authorized under this section in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of this part.

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary, shall promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

(3) Persons developing or carrying out voluntary agreements and plans of action authorized pursuant to this section shall maintain such records as are required by rules promulgated under paragraph (2). The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe such rules as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by the antitrust laws or the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.]; and wherever any such law refers to ''the purposes of this Act'' or like terms, the reference shall be understood to include this section.

(f) Defense to civil or criminal antitrust actions

(1) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or carry out a voluntary agreement or plan of action by persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products (provided that such actions were not taken for the purpose of injuring competition) that—

(A) such actions were taken—

(i) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(ii) to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section, and

(B) such persons complied with the requirements of this section and the rules promulgated hereunder.

(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense provided in this subsection shall be available only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved plan of action.

(3) Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(g) Acts or practices occurring prior to date of enactment of chapter or subsequent to its expiration or repeal

No provision of this section shall be construed as granting immunity for, or as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any act or practice which occurred prior to the date of enactment of this chapter or subsequent to its expiration or repeal.

(h) Applicability of Defense Production Act of 1950

Upon the expiration of the 90-day period which begins on December 22, 1975, the provisions of sections 708 and 708A [1] (other than 708A(*o*)) of the Defense Production Act of 1950 [50 App. U.S.C. 2158, 2158a] shall not apply to any agreement or action undertaken for the purpose of developing or carrying out (1) the international energy program, or (2) any allocation, price control, or similar program with respect to petroleum products under this chapter or under the Emergency Petroleum Allocation Act of 1973 [1] [15 U.S.C. 751 et seq.]. For purposes of section 708(A)(*o*) [2] of the Defense Production Act of 1950, the effective date of the provisions of this chapter which relate to international voluntary agreements to carry out the International Energy Program shall be deemed to be 90 days after December 22, 1975.

(i) Reports by Attorney General and Federal Trade Commission to Congress and President

The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every 6 months, a report on the impact on competition and on small business of actions authorized by this section.

(j) Defense in breach of contract actions

In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry

[1] See References in Text note below.

[2] So in original. Probably should be section ''708A(*o*)''.

out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(k) Definitions

As used in this section and section 6274 of this title:

(1) The term ''international energy supply emergency'' means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under subparagraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2) The term ''allocation and information provisions of the international energy program'' means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such program.

(*l*) Applicability of authority

The authority granted by this section shall apply only to the development or carrying out of voluntary agreements and plans of action to implement chapters III, IV, and V of the international energy program.

(m) Limitation on new plans of action

(1) With respect to any plan of action approved by the Attorney General after July 2, 1985—

(A) the defenses under subsection (f) and (j) of this section shall be applicable to Type 1 activities (as that term is defined in the International Energy Agency Emergency Management Manual, dated December 1982) only if—

(i) the Secretary has transmitted such plan of action to the Congress; and

(ii)(I) 90 calendar days of continuous session have elapsed since receipt by the Congress of such transmittal; or

(II) within 90 calendar days of continuous session after receipt of such transmittal, either House of the Congress has disapproved a joint resolution of disapproval pursuant to subsection (n) of this section; and

(B) such defenses shall not be applicable to Type 1 activities if there has been enacted, in accordance with subsection (n) of this section, a joint resolution of disapproval.

(2) The Secretary may withdraw the plan of action at any time prior to adoption of a joint resolution described in subsection (n)(3) of this section by either House of Congress.

(3) For the purpose of this subsection—

(A) continuity of session is broken only by an adjournment of the Congress sine die at the end of the second session of Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

(n) Joint resolution of disapproval

(1)(A) The application of defenses under subsections (f) and (j) of this section for Type 1 activities with respect to any plan of action transmitted to Congress as described in subsection (m)(1)(A)(i) of this section shall be disapproved if a joint resolution of disapproval has been enacted into law during the 90-day period of continuous session after which such transmission was received by the Congress. For the purpose of this subsection, the term ''joint resolution'' means only a joint resolution of either House of the Congress as described in paragraph (3).

(B) After receipt by the Congress of such plan of action, a joint resolution of disapproval may be introduced in either House of the Congress. Upon introduction in the Senate, the joint resolution shall be referred in the Senate immediately to the Committee on Energy and Natural Resources of the Senate.

(2) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by paragraph (3); it supersedes other rules only to the extent that is inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(3) The joint resolution disapproving the transmission under subsection (m) of this section shall read as follows after the resolving clause: ''That the Congress of the United States disapproves the availability of the defenses pursuant to section 252 (f) and (j) of the Energy Policy and Conservation Act with respect to Type 1 activities under the plan of action submitted to the Congress by the Secretary of Energy on .'', the blank space therein being filled with the date and year of receipt by the Congress of the plan of action transmitted as described in subsection (m) of this section.

(4)(A) If the Committee on Energy and Natural Resources of the Senate has not reported a joint resolution referred to it under this subsection at the end of 20 calendar days of continuous session after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other joint resolution which has been referred to the committee with respect to such plan of action.

(B) A motion to discharge shall be highly privileged (except that it may not be made after the Committee on Energy and Natural Resources has reported a joint resolution with respect to the plan of action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the joint resolution. An amendment to the

motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other joint resolution with respect to the same transmission.

(5)(A) When the Committee on Energy and Natural Resources of the Senate has reported or has been discharged from further consideration of a joint resolution, it shall be in order at any time thereafter within the 90-day period following receipt by the Congress of the plan of action (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such joint resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider a vote by which the motion was agreed to or disagreed to.

(B) Debate on the joint resolution shall be limited to not more than 10 hours and final action on the joint resolution shall occur immediately following conclusion of such debate. A motion further to limit debate shall not be debatable. A motion to recommit such a joint resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such a joint resolution was agreed to or disagreed to.

(6)(A) Motions to postpone made with respect to the discharge from committee or consideration of a joint resolution, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of rules of the Senate to the procedures relating to a joint resolution shall be decided without debate.

(Pub. L. 94–163, title II, §252, Dec. 22, 1975, 89 Stat. 894; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96–30, June 30, 1979, 93 Stat. 80; Pub. L. 96–94, Oct. 31, 1979, 93 Stat. 720; Pub. L. 96–133, §§1, 2, Nov. 30, 1979, 93 Stat. 1053; Pub. L. 97–5, Mar. 13, 1981, 95 Stat. 7; Pub. L. 97–50, Sept. 30, 1981, 95 Stat. 957; Pub. L. 97–163, Apr. 1, 1982, 96 Stat. 24; Pub. L. 97–190, June 1, 1982, 96 Stat. 106; Pub. L. 97–217, July 19, 1982, 96 Stat. 196; Pub. L. 97–229, §2(a), (b)(2), Aug. 3, 1982, 96 Stat. 248; Pub. L. 98–239, Mar. 20, 1984, 98 Stat. 93; Pub. L. 99–58, title I, §§104(c)(2), (4), 105, July 2, 1985, 99 Stat. 105.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (a)(2), (e)(4), and (f)(1), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The Antitrust Civil Process Act, referred to in subsec. (e)(4), is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§1311 et seq.) of Title 15. For complete classification of that Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

The date of enactment of this chapter, referred to in subsec. (g), means the date of enactment of Pub. L. 94–163, which was approved Dec. 22, 1975.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (h), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of Title 15, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

Section 708A of the Defense Production Act of 1950, referred to in subsec. (h), which was classified to section 2158a(*o*) of Title 50, Appendix, War and National Defense, was repealed by Pub. L. 102–99, §4, Aug. 17, 1991, 105 Stat. 487.

Section 252(f) and (j) of the Energy Policy and Conservation Act, referred to in subsection (n)(3), is classified to subsecs. (f) and (j) of this section.

AMENDMENTS

1985—Subsec. (d)(1). Pub. L. 99–58, §104(c)(4), substituted ''subsection (f) or (j)'' for ''subsection (f) or (k)''.

Subsecs. (j) to (*l*). Pub. L. 99–58, §104(c)(2), redesignated subsecs. (k) to (m) as (j) to (*l*). Former subsec. (j), which provided that the authority granted by this section would terminate at midnight, June 30, 1985, was struck out.

Subsecs. (m), (n). Pub. L. 99–58, §105, added subsecs. (m) and (n). Former subsec. (m) redesignated (*l*).

1984—Subsec. (j). Pub. L. 98–239 substituted ''June 30, 1985'' for ''December 31, 1983''.

1982—Subsec. (j). Pub. L. 97–229, §2(a), substituted ''at midnight December 31, 1983'' for ''August 1, 1982''.

Pub. L. 97–217 substituted ''August 1, 1982'' for ''July 1, 1982''.

Pub. L. 97–190 substituted ''July 1, 1982'' for ''June 1, 1982''.

Pub. L. 97–163 substituted ''June 1, 1982'' for ''April 1, 1982''.

Subsec. (m). Pub. L. 97–229, §2(b)(2), added subsec. (m).

1981—Subsec. (j). Pub. L. 97–50 substituted ''April 1, 1982'' for ''September 30, 1981''.

Pub. L. 97–5 substituted ''September 30, 1981'' for ''March 15, 1981''.

1979—Subsec. (c)(4). Pub. L. 96–133, §2, inserted provisions respecting access to transcripts.

Subsec. (j). Pub. L. 96–133, §1, substituted ''March 15, 1981'' for ''November 30, 1979''.

Pub. L. 96–94 substituted ''November 30'' for ''October 31''.

Pub. L. 96–30 substituted ''October 31, 1979'' for ''June 30, 1979''.

1978—Subsecs. (b), (c)(1)(A)(iii), (2), (3), (d)(1), (2), (e)(2). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

STUDY AND REPORT ON ENERGY POLICY COOPERATION BETWEEN UNITED STATES AND OTHER WESTERN HEMISPHERE COUNTRIES

Pub. L. 100–373, §2, July 19, 1988, 102 Stat. 878, directed Secretary of Energy, in consultation with Secretary of State and Secretary of Commerce, to conduct a study to determine how best to enhance cooperation between United States and other countries of Western Hemisphere with respect to energy policy including stable supplies of, and stable prices for, energy, with Secretary of Energy to report results of such study to Congress, propose a comprehensive international energy policy for United States designed to enhance cooperation between United States and other countries of the Western Hemisphere, and recommend such action as Secretary deemed necessary to establish and implement such policy.

REPORT OF IMPLEMENTATION ACTIVITIES UNDER INTERNATIONAL VOLUNTARY AGREEMENTS

Section 3 of Pub. L. 96–133, directed Secretary of Energy, in consultation with Secretary of State, Attorney General, and Chairman of Federal Trade Commission, to prepare and submit to appropriate committees of Congress, a report concerning actions taken by them to carry out provisions of this section, which report was to examine and discuss extent to which all, or part, of any meeting held in accordance with subsec. (c) of this

section to carry out a voluntary agreement or to develop or carry out a plan of action should be open to interested persons in furtherance of provisions of subsec. (c)(1)(A) of this section, policies and procedures followed by appropriate Federal agencies in reviewing and making public or withholding from the public all, or part, of any transcript of any meeting held to develop or carry out a voluntary agreement or plan of action under this section and in permitting persons, other than citizens of United States, to review such transcripts prior to any public disclosure thereof, extent to which classification of all, or part, of such transcripts should be carried out by one agency, adequacy of actions by responsible Federal agencies in insuring that standards and procedures required by this section are fully implemented and enforced, including monitoring of program concerning any anticompetitive effects, and number of personnel, and amount of funds, assigned by each such agency to carry out such standards and procedures, actions taken, or to be taken, to improve reporting of energy supply data under international energy program and to reconcile such reporting with similar reporting that is conducted by Department of Energy, actions taken, or planned, to improve reporting required by subsec. (i) of this section, and other actions under subsec. (i) of this section and to transmit such report to such committees within 120 days after Nov. 30, 1979, and to make such report available to the public.

CLASSIFICATION OF CERTAIN INFORMATION AND MATERIAL

For provisions relating to the classification of certain information and material obtained from advisory bodies created to implement the International Energy Program, see Ex. Ord. No. 11932, eff. Aug. 4, 1976, 41 F.R. 32691, set out as a note under section 401 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6271, 6395 of this title.

§ 6273. Advisory committees

(a) Authority of Secretary to establish; applicability of section 17 of Federal Energy Administration Act of 1974; chairman; inclusion of representatives of public; public meetings; notice of meeting to Attorney General and Federal Trade Commission; attendance and participation of their representatives

To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Secretary may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974 [15 U.S.C. 776] (whether or not such Act [15 U.S.C. 761 et seq.] or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(b) Transcript of meetings

A verbatim transcript shall be kept of such advisory committee meetings, and shall be deposited with the Attorney General and the Federal Trade Commission. Such transcript shall be made available for public inspection and copying in accordance with section 552 of title 5, except that matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), and so much of (b)(4) as relates to trade secrets, or pursuant to a determination under subsection (c) of this section.

(c) Suspension of application of certain requirements by President

The President, after consultation with the Secretary of State, the Federal Trade Commission, the Attorney General, and the Secretary, may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,

(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act of 1974 [15 U.S.C. 776],

(3) the requirement under subsection (a) of this section that meetings be open to the public, and

(4) the second sentence of subsection (b) of this section;

if the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension relates solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

(Pub. L. 94–163, title II, § 253, Dec. 22, 1975, 89 Stat. 898; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

REFERENCES IN TEXT

The Federal Energy Administration Act of 1974, referred to in subsec. (a), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§ 761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

Sections 10 and 11 of the Federal Advisory Committee Act, referred to in subsec. (c)(1), are sections 10 and 11 of Pub. L. 92–463, which are set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1978—Subsecs. (a), (c). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

CLASSIFICATION OF CERTAIN INFORMATION AND MATERIAL

For provisions relating to the classification of certain information and material obtained from advisory bodies created to implement the International Energy Program, see Ex. Ord. No. 11932, eff. Aug. 4, 1976, 41 F.R. 32691, set out as a note under section 401 of Title 50, War and National Defense.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the end of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6274. Exchange of information with International Energy Agency

(a) Submission of information by Secretary to Secretary of State; transmittal to Agency; aggregation and reporting of geological or geophysical information, trade secrets, or commercial or financial information; availability of such information during international energy supply emergency; certification by President that Agency has adopted security measures; review of compliance of other nations with program; petition to President for changes in procedure

(1) Except as provided in subsections (b) and (c) of this section, the Secretary, after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any such information or data which is geological or geophysical information or a trade secret or commercial or financial information to which section 552(b)(9) or (b)(4) of title 5 applies shall, prior to such transmittal, be aggregated, accumulated, or otherwise reported in such manner as to avoid, to the fullest extent feasible, identification of any person from whom the United States obtained such information or data, and in the case of geological or geophysical information, a competitive disadvantage to such person.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, during an international energy supply emergency, any such information or data with respect to the international allocation of petroleum products may be made available to the International Energy Agency is otherwise authorized to be made available to such Agency by paragraph (1) of this subsection.

(ii) Subparagraph (A) shall not apply to information described in subparagraph (A) (other than geological or geophysical information) if the President certifies, after opportunity for presentation of views by interested persons, that the International Energy Agency has adopted and is implementing security measures which assure that such information will not be disclosed by such Agency or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained such information or data.

(3)(A) Within 90 days after December 22, 1975, and periodically thereafter, the President shall review the operation of this section and shall determine whether other signatory nations to the international energy program are transmitting information and data to the International Energy Agency in substantial compliance with such program. If the President determines that other nations are not so complying, paragraph (2)(B)(ii) shall not apply until he determines other nations are so complying.

(B) Any person who believes he has been or will be damaged by the transmittal of information or data pursuant to this section shall have the right to petition the President and to request changes in procedures which will protect such person from any competitive damage.

(b) Halting transmittal of information that would prejudice competition, violate antitrust laws, or be inconsistent with security interests

If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or be inconsistent with United States national security interests, he may require that such data or information not be transmitted.

(c) Information protected by statute

Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data shall consider the purposes for which such information and data were collected, gathered, and obtained, the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

(d) Continuation of authority to collect data under Energy Supply and Environmental Coordination Act and Federal Energy Administration Act of 1974

For the purposes of carrying out the obligations of the United States under the international energy program, the authority to collect data granted by sections 11 and 13 of the Energy Supply and Environmental Coordination Act [15 U.S.C. 796] and the Federal Energy Administration Act of 1974 [15 U.S.C. 772], respectively, shall continue in full force and effect without regard to the provisions of such Acts relating to their expiration.

(e) Limitation on disclosure contained in other laws

The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 796(d)];

(2) section 14(b) of the Federal Energy Administration Act of 1974 [15 U.S.C. 773(b)];

(3) section 12 of the Export Administration Act of 1979 [50 App. U.S.C. 2411];

(4) section 9 of title 13;

(5) section 176a of title 15; and

(6) section 1905 of title 18.

(Pub. L. 94–163, title II, § 254, Dec. 22, 1975, 89 Stat. 899; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96–72, § 22(b)(2), Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (b), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The provisions of such Acts relating to their expiration, referred to in subsec. (d), means section 11(g) of Pub. L. 93–319, June 22, 1974, 88 Stat. 246, the Energy Supply and Environmental Coordination Act, which enacted section 796(g) of Title 15, and section 30 of Pub. L. 93–275, May 7, 1974, 88 Stat. 97, the Federal Energy Administration Act of 1974, which is set out as a note under section 761 of Title 15.

AMENDMENTS

1979—Subsec. (e)(3). Pub. L. 96–72 substituted ''12'' for ''7'' and ''1979'' for ''1969''.

1978—Subsecs. (a)(1), (c). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see section 2418 of Appendix to Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6272, 6395 of this title.

§ 6275. Relationship between standby emergency authorities and international energy program

The purpose of the Congress in enacting this subchapter is to provide standby energy emergency authority to deal with energy shortage conditions and to minimize economic dislocations and adverse impacts on employment. While the authorities contained in this subchapter may, to the extent authorized by this subchapter, be used to carry out obligations incurred by the United States in connection with the International Energy Program, this subchapter shall not be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program.

(Pub. L. 94–163, title II, § 255, Dec. 22, 1975, 89 Stat. 900.)

§ 6276. Domestic renewable energy industry and related service industries

(a) Purpose

It is the purpose of this section to implement the responsibilities of the United States under chapter VII of the international energy program with respect to development of alternative energy by facilitating the overall abilities of the domestic renewable energy industry and related service industries to create new markets.

(b) Evaluation; report to Congress

(1) Before the later of—

(A) 6 months after July 18, 1984, and

(B) May 31, 1985,

the Secretary of Commerce shall conduct an evaluation regarding the domestic renewable energy industry and related service industries and submit a report of his findings to the Congress.

(2) Such evaluation shall include—

(A) an assessment of the technical and commercial status of the domestic renewable energy industry and related service industries in domestic and foreign markets;

(B) an assessment of the Federal Government's activities affecting commerce in the domestic renewable energy industry and related service industries and in consolidating and coordinating such activities within the Federal Government; and

(C) an assessment of the aspects of the domestic renewable energy industry and related service industries in which improvements must be made to increase the international commercialization of such industry.

(c) Program for enhancing commerce in renewable energy technologies; funding

(1) On the basis of the evaluation under subsection (b) of this section, the Secretary of Commerce shall, consistent with existing law, establish a program for enhancing commerce in renewable energy technologies and consolidating or coordinating existing activities for such purpose.

(2) Such program shall provide for—

(A) the broadening of the participation by the domestic renewable energy industry and related service industries in such activities;

(B) the promotion of the domestic renewable energy industry and related service industries on a worldwide basis;

(C) the participation by the Federal Government and the domestic renewable energy industry and related service industries in international standard-setting activities; and

(D) the establishment of an information program under which—

(i) technical information about the domestic renewable energy industry and related service industries shall be provided to appropriate public and private officials engaged in commerce, and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others, and

(ii) marketing information about export and export financing opportunities shall be available to the domestic renewable energy industry and related service industries.

(3) Necessary funds required for carrying out such program shall be requested in connection with fiscal years beginning after September 30, 1984.

(d) Interagency working group

(1) Establishment

(A) There shall be established an interagency working group that, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting exports of renewable energy and energy efficiency products and services. The interagency working group shall establish a program to inform foreign countries of the benefits of policies that would increase energy efficiency or would allow facilities that use renewable energy to compete effectively with producers of energy from nonrenewable sources.

(B) There shall be established an Interagency Working Subgroup on Renewable Energy and an Interagency Working Subgroup on Energy Efficiency that shall, in consultation with representative industry groups, nonprofit organizations, and relevant Federal agencies, make recommendations to coordinate the actions and programs of the Federal Government to promote the export of domestic renewable energy and energy efficiency products and services, respectively.

(C) The Secretary of Energy, or the Secretary's designee, shall chair the interagency working group and each subgroup established under this paragraph. The Administrator of the Agency for International Development and the Secretary of Commerce, or their designees, shall be members of both subgroups established under this paragraph. The Secretary shall provide staff for carrying out the functions of the interagency working group and each subgroup established under this paragraph. The heads of appropriate agencies may detail such personnel and may furnish such services to such group and subgroups, with or without reimbursement, as may be necessary to carry out their functions.

(2) Duties of the interagency working subgroups

(A) The interagency working subgroups established under paragraph (1)(B), through the member agencies of the interagency working group, shall promote the development and application in foreign countries of renewable energy and energy efficiency products and services, respectively, that—

(i) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, wind, small-scale hydroelectric, solar, geothermal, and other renewable energy and energy efficiency products and services; and

(ii) use hybrid fossil-renewable energy systems.

(B) In addition, the interagency working subgroups shall explore mechanisms for assisting domestic firms, particularly small businesses, with the export of their renewable energy and energy efficiency products and services and with the identification of potential projects.

(3) Training and assistance

The interagency working subgroups shall encourage the member agencies of the interagency working group to—

(A) provide technical training and education for international development personnel and local users in their own country;

(B) provide financial and technical assistance to nonprofit institutions that support the marketing and export efforts of domestic companies that provide renewable energy and energy efficiency products and services;

(C) develop environmentally sustainable renewable energy and energy efficiency projects in foreign countries;

(D) provide technical assistance and training materials to loan officers of the World Bank, international lending institutions, commercial and energy attaches at embassies of the United States and other appropriate personnel in order to provide information about renewable energy and energy efficiency products and services to foreign governments or other potential project sponsors;

(E) support, through financial incentives, private sector efforts to commercialize and export renewable energy and energy efficiency products and services; and

(F) augment budgets for trade and development programs in order to support pre-feasibility or feasibility studies for projects that utilize renewable energy and energy efficiency products and services.

(4) Study of export promotion practices

The interagency working group shall conduct a study of subsidies, incentives, and policies that foreign countries use to promote exports of their own renewable energy and energy efficiency technologies and products. Such study shall also identify foreign trade barriers to the import of renewable energy and energy efficiency technologies and products produced in the United States. The interagency working group shall report to the appropriate committees of the House of Representatives and the Senate the results of such study within 18 months after October 24, 1992.

(e) Annual report to Congress by interagency working group

The interagency working group established under subsection (d) of this section shall annually report to Congress, describing the actions of each agency represented by a member of the working group taken during the previous fiscal year to achieve the purposes of such working group and of this section. Such report shall describe the exports of renewable energy technology that have occurred as a result of such agency actions.

(f) Functions of interagency working group; plan to increase United States exports of renewable energy and energy efficiency technologies

(1) The interagency working group shall—

(A) establish, in consultation with representatives of affected industries, a plan to

increase United States exports of renewable energy and energy efficiency technologies, and include in such plan recommended guidelines for agencies that are represented on the working group with respect to the financing of, or other actions they can take within their programs to promote, exports of such renewable energy and energy efficiency technologies;

(B) develop, in consultation with representatives of affected industries, recommended administrative guidelines for Federal export loan programs to simplify application by firms seeking export assistance for renewable energy and energy efficiency technologies from agencies implementing such programs; and

(C) recommend specific renewable energy and energy efficiency technology markets for primary emphasis by Federal export loan programs, development programs, and private sector assistance programs.

(2) The interagency working group shall include a description of the plan established under paragraph (1)(A) in no later than the second report submitted under subsection (e) of this section, and shall include in subsequent reports a description of any modifications to such plan and of the progress in implementing the plan.

(g) Repealed. Pub. L. 102–486, title XII, § 1207(c), Oct. 24, 1992, 106 Stat. 2963

(h) Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of carrying out the programs under subsections (d) and (e) of this section $10,000,000, to be divided equitably between the interagency working subgroups based on program requirements, for each of the fiscal years 1993 and 1994, and such sums as may be necessary for fiscal year 1995 to carry out the purposes of this subtitle.[1]

(Pub. L. 94–163, title II, § 256, as added Pub. L. 98–370, § 2, July 18, 1984, 98 Stat. 1211; amended Pub. L. 101–218, § 7, Dec. 11, 1989, 103 Stat. 1867; Pub. L. 102–486, title XII, §§ 1207, 1208, Oct. 24, 1992, 106 Stat. 2962, 2964.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (h), is unidentifiable in the original because neither title XII of Pub. L. 102–486 which added subsec. (h) of this section, nor title II of Pub. L. 94–163, which enacted this section, contains subtitles.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–486, § 1207(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) There shall be established an interagency working group which, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting commerce in renewable energy products and related services. The Secretary of Energy shall be the chairman of such group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working group, with or without reimbursement, as may be necessary to carry out its functions.

''(2) The interagency group shall establish a program to inform other countries of the benefits of policies that would allow small facilities which produce renewable energy to compete effectively with producers of energy from nonrenewable sources.''

Subsec. (d)(4). Pub. L. 102–486, § 1208, added par. (4).

Subsec. (f)(1). Pub. L. 102–486, § 1207(b), inserted ''and energy efficiency'' after ''renewable energy'' wherever appearing.

Subsec. (g). Pub. L. 102–486, § 1207(c), struck out subsec. (g) which read as follows: ''For purposes of this section, the term 'renewable energy' includes energy efficiency to the extent it is a part of a renewable energy system or technology.''

Subsec. (h). Pub. L. 102–486, § 1207(d), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''There are authorized to be appropriated to the Secretary for activities of the interagency working group established under subsection (d) of this section not to exceed—

''(1) $3,000,000 for fiscal year 1991;

''(2) $3,300,000 for fiscal year 1992; and

''(3) $3,600,000 for fiscal year 1993.''

1989—Subsec. (c)(2)(D)(i). Pub. L. 101–218, § 7(a)(1), inserted ''and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others,'' after ''commerce,''.

Subsec. (c)(2)(D)(ii). Pub. L. 101–218, § 7(a)(2), substituted ''export and export financing opportunities'' for ''export opportunities''.

Subsec. (d). Pub. L. 101–218, § 7(b), designated existing provisions as par. (1) and added par. (2).

Subsecs. (e) to (h). Pub. L. 101–218, § 7(c), added subsecs. (e) to (h).

EFFECTIVE DATE

Section 3 of Pub. L. 98–370 provided that: ''The amendments made by this Act [enacting this section and a provision set out as a note under section 6201 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13315, 13316, 13387 of this title.

PART C—ENERGY EMERGENCY PREPAREDNESS

§ 6281. Congressional findings, policy, and purpose

(a) Findings

The Congress finds that—

(1) a shortage of petroleum products caused by reductions in imports of petroleum products may occur at any time;

(2) such a shortage may be sufficiently large to cause severe economic dislocations and hardships, or constitute a serious threat to public health, safety, and welfare; and

(3) prior to the occurrence of such a shortage, the Federal Government has a responsibility to be prepared to mitigate the adverse impacts of such a shortage as a supplement to reliance on free market pricing and allocation of available petroleum product supplies.

(b) Policy

The Congress declares that it shall be the policy of the United States that the Federal Government shall be prepared prior to any shortage of petroleum products to respond to energy emergencies, pursuant to authorities under provisions of law other than this part, as a supplement to reliance on the free market to mitigate the adverse impacts of a shortage of petroleum products on public health, safety, and welfare.

[1] See References in Text note below.

(c) Purpose

The purpose of this part is to carry out the policy in subsection (b) of this section by providing for the preparation of comprehensive energy emergency response procedures to be available for use by the President under authorities contained in any provision of law other than this part.

(Pub. L. 94–163, title II, § 271, as added Pub. L. 97–229, § 3(a), Aug. 3, 1982, 96 Stat. 248.)

§ 6282. Preparation for petroleum supply interruptions

(a) Description of available legal authorities

(1) The President shall submit to the Congress no later than November 15, 1982, a memorandum of law which describes the nature and extent of the authorities available to the President under existing law to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States.

(2) The memorandum of law required by paragraph (1) shall be prepared by the Attorney General, in consultation with the Secretary of Energy.

(3) The memorandum of law submitted to the Congress pursuant to this subsection shall—

(A) include the following subjects—

(i) activities of the United States in support of the international energy program and the December 10, 1981, International Energy Agency agreement entitled ''Decision on Preparation for Future Supply Disruptions'' including—

(I) the National Emergency Sharing Organization;

(II) emergency sharing systems; and

(III) the supply right project;

(ii) activities of the United States pursuant to its energy emergency preparedness obligations to the North Atlantic Treaty Organization;

(iii) development and use of the Strategic Petroleum Reserve;

(iv) Government incentives to encourage private petroleum product stocks;

(v) reactivation of the following Executive Manpower Reserves:

(I) the Emergency Electric Power Reserve;

(II) the Emergency Petroleum and Gas Reserve; and

(III) the Emergency Solid Fuels Reserve;

(vi) energy emergency response management in coordination with State and local governments; and

(vii) emergency public information activities; and

(B) distinguish among—

(i) situations involving limited or general war, international tensions that threaten national security, and other Presidentially declared emergencies;

(ii) events resulting in activation of the international energy program; and

(iii) events or situations less severe than those described in clauses (i) and (ii).

(b) Comprehensive energy emergency response procedures

(1) Not later than December 31, 1982, the President shall submit to the Congress comprehensive energy emergency response procedures for implementation, in whole or in part, of the authorities described under subsection (a) of this section.

(2) The comprehensive energy emergency response procedures shall—

(A) describe the various options the President would consider using to implement the authorities described in the memorandum of law submitted under subsection (a) of this section to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States, including a description of the likely sequence in which such options would be taken;

(B) specify how appropriate governmental actions in response to international and domestic energy shortages would be selected and implemented under such options, particularly which official or governmental entity would select and implement such actions, and what procedures would be used in doing so; and

(C) recommend any additional statutory authority the President considers necessary to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States.

(c) Disclaimers

(1) Nothing in this part, or in the comprehensive energy emergency response procedures submitted pursuant to subsection (b) of this section, shall—

(A) limit the authority of the President under any provision of law to respond to a reduction in the amount of petroleum products available to the United States; or

(B) grant any authority to the President to respond to a reduction in the amount of petroleum products available to the United States.

(2) No State law or State program in effect on August 3, 1982, or which may become effective thereafter, shall be construed to be superseded by any provision of this part.

(Pub. L. 94–163, title II, § 272, as added Pub. L. 97–229, § 3(a), Aug. 3, 1982, 96 Stat. 249.)

PART D—EXPIRATION

§ 6285. Expiration

Except as otherwise provided in this subchapter, all authority under any provision of this subchapter and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, June 30, 1996, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1996.

(Pub. L. 94–163, title II, § 281, as added Pub. L. 99–58, title I, § 104(a), July 2, 1985, 99 Stat. 104; amended Pub. L. 100–373, § 1, July 19, 1988, 102 Stat. 878; Pub. L. 101–262, § 2(c), Mar. 31, 1990, 104

Stat. 124; Pub. L. 101–360, § 2(c), Aug. 10, 1990, 104 Stat. 421; Pub. L. 101–383, § 2(3), Sept. 15, 1990, 104 Stat. 727; Pub. L. 103–406, title I, § 103, Oct. 22, 1994, 108 Stat. 4209.)

CODIFICATION

Words ''(other than a provision of such title amending another law)'' appearing in the original in this section, have been omitted as unnecessary. Such title meant title II of Pub. L. 94–163 which is classified in its entirety to this subchapter.

AMENDMENTS

1994—Pub. L. 103–406 substituted ''June 30, 1996'' for ''September 30, 1994'' in two places.

1990—Pub. L. 101–383 substituted ''September 30, 1994'' for ''September 15, 1990'' in two places.

Pub. L. 101–360 substituted ''September 15, 1990'' for ''August 15, 1990'' in two places.

Pub. L. 101–262 substituted ''August 15, 1990'' for ''June 30, 1990'' in two places.

1988—Pub. L. 100–373 substituted ''1990'' for ''1988'' in two places.

SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY

PART A—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

CODIFICATION

This part was, in the original, designated part B and has been redesignated as part A for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6316 of this title.

§ 6291. Definitions

For purposes of this part:

(1) The term ''consumer product'' means any article (other than an automobile, as defined in section 32901(a)(3) of title 49) of a type—

(A) which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption..[1]

(2) The term ''covered product'' means a consumer product of a type specified in section 6292 of this title.

(3) The term ''energy'' means electricity, or fossil fuels. The Secretary may, by rule, include other fuels within the meaning of the term ''energy'' if he determines that such inclusion is necessary or appropriate to carry out the purposes of this chapter.

(4) The term ''energy use'' means the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures under section 6293 of this title.

(5) The term ''energy efficiency'' means the ratio of the useful output of services from a consumer product to the energy use of such product, determined in accordance with test procedures under section 6293 of this title.

(6) The term ''energy conservation standard'' means—

(A) a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title; or

(B) a design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of section 6292(a) of this title; and

includes any other requirements which the Secretary may prescribe under section 6295(r) of this title.

(7) The term ''estimated annual operating cost'' means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer product, determined in accordance with section 6293 of this title.

(8) The term ''measure of energy consumption'' means energy use, energy efficiency, estimated annual operating cost, or other measure of energy consumption.

(9) The term ''class of covered products'' means a group of covered products, the functions or intended uses of which are similar (as determined by the Secretary).

(10) The term ''manufacture'' means to manufacture, produce, assemble or import.

(11) The terms ''import'' and ''importation'' mean to import into the customs territory of the United States.

(12) The term ''manufacturer'' means any person who manufactures a consumer product.

(13) The term ''retailer'' means a person to whom a consumer product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale.

(14) The term ''distributor'' means a person (other than a manufacturer or retailer) to whom a consumer product is delivered or sold for purposes of distribution in commerce.

(15)(A) The term ''private labeler'' means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product, (ii) the person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled, and (iii) the brand or trademark of a manufac-

[1] So in original.

turer of such product does not appear on such label.

(16) The terms ''to distribute in commerce'' and ''distribution in commerce'' mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(17) The term ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(18) The term ''Commission'' means the Federal Trade Commission.

(19) The term ''AV'' is the adjusted volume for refrigerators, refrigerator-freezers, and freezers, as defined in the applicable test procedure prescribed under section 6293 of this title.

(20) The term ''annual fuel utilization efficiency'' means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 6293 of this title and based on the assumption that all—

(A) weatherized warm air furnaces or boilers are located out-of-doors;

(B) warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grills or ducts from the outdoors and does not communicate with air in the conditioned space; and

(C) boilers which are not weatherized are located within the heated space.

(21) The term ''central air conditioner'' means a product, other than a packaged terminal air conditioner, which—

(A) is powered by single phase electric current;

(B) is air-cooled;

(C) is rated below 65,000 Btu per hour;

(D) is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour; and

(E) is a heat pump or a cooling only unit.

(22) The term ''efficiency descriptor'' means the ratio of the useful output to the total energy input, determined using the test procedures prescribed under section 6293 of this title and expressed for the following products in the following terms:

(A) For furnaces and direct heating equipment, annual fuel utilization efficiency.

(B) For room air conditioners, energy efficiency ratio.

(C) For central air conditioning and central air conditioning heat pumps, seasonal energy efficiency ratio.

(D) For water heaters, energy factor.

(E) For pool heaters, thermal efficiency.

(23) The term ''furnace'' means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(A) is designed to be the principal heating source for the living space of a residence;

(B) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(C) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(D) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

(24) The terms ''heat pump'' or ''reverse cycle'' mean a product, other than a packaged terminal heat pump, which—

(A) consists of one or more assemblies;

(B) is powered by single phase electric current;

(C) is rated below 65,000 Btu per hour;

(D) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and

(E) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

(25) The term ''pool heater'' means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

(26) The term ''thermal efficiency of pool heaters'' means a measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the American National Standard for Gas Fired Pool Heaters, Z21.56–1986, or as may be prescribed by the Secretary.

(27) The term ''water heater'' means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as

fans, storage tanks, pumps, or controls necessary for the device to perform its function.

(28) The term ''weatherized warm air furnace or boiler'' means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

(29)(A) The term ''fluorescent lamp ballast'' means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

(B) The term ''ANSI standard'' means a standard developed by a committee accredited by the American National Standards Institute.

(C) The term ''ballast efficacy factor'' means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(D)(i) The term ''F40T12 lamp'' means a nominal 40 watt tubular fluorescent lamp which is 48 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.1–1978(R1984).

(ii) The term ''F96T12 lamp'' means a nominal 75 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.3–1978(R1984).

(iii) The term ''F96T12HO lamp'' means a nominal 110 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.1–1978(R1984).

(E) The term ''input current'' means the root-mean-square (RMS) current in amperes delivered to a fluorescent lamp ballast.

(F) The term ''luminaire'' means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(G) The term ''ballast input voltage'' means the rated input voltage of a fluorescent lamp ballast.

(H) The term ''nominal lamp watts'' means the wattage at which a fluorescent lamp is designed to operate.

(I) The term ''power factor'' means the power input divided by the product of ballast input voltage and input current of a fluorescent lamp ballast, as measured under test conditions specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(J) The term ''power input'' means the power consumption in watts of a ballast and fluorescent lamp or lamps, as determined in accordance with the test procedures specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(K) The term ''relative light output'' means the light output delivered through the use of a ballast divided by the light output delivered through the use of a reference ballast, expressed as a percent, as determined in accordance with the test procedures specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(L) The term ''residential building'' means a structure or portion of a structure which provides facilities or shelter for human residency, except that such term does not include any multifamily residential structure of more than three stories above grade.

(30)(A) Except as provided in subparagraph (E), the term ''fluorescent lamp'' means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements.

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985.

(B) The term ''general service fluorescent lamp'' means fluorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth.

(ii) Fluorescent lamps specifically designed for cold temperature installations.

(iii) Colored fluorescent lamps.

(iv) Impact-resistant fluorescent lamps.

(v) Reflectorized or aperture lamps.

(vi) Fluorescent lamps designed for use in reprographic equipment.

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum.

(viii) Lamps with a color rendering index of 82 or greater.

(C) Except as provided in subparagraph (E), the term ''incandescent lamp'' means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or de-

signed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) a low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) a high(er) wattage reflector lamp which has a rated wattage above 205 watts.

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

(D) The term ''general service incandescent lamp'' means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamps specifically designed for—

(i) traffic signal, or street lighting service;

(ii) airway, airport, aircraft, or other aviation service;

(iii) marine or marine signal service;

(iv) photo, projection, sound reproduction, or film viewer service;

(v) stage, studio, or television service;

(vi) mill, saw mill, or other industrial process service;

(vii) mine service;

(viii) headlight, locomotive, street railway, or other transportation service;

(ix) heating service;

(x) code beacon, marine signal, lighthouse, reprographic, or other communication service;

(xi) medical or dental service;

(xii) microscope, map, microfilm, or other specialized equipment service;

(xiii) swimming pool or other underwater service;

(xiv) decorative or showcase service;

(xv) producing colored light;

(xvi) shatter resistance which has an external protective coating; or

(xvii) appliance service.

(E) The terms ''fluorescent lamp'' and ''incandescent lamp'' do not include any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

(F) The term ''incandescent reflector lamp'' means a lamp described in subparagraph (C)(ii).

(G) The term ''average lamp efficacy'' means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(H) The term ''base'' means the portion of the lamp which connects with the socket as described in ANSI C81.61–1990.

(I) The term ''bulb shape'' means the shape of lamp, especially the glass bulb with designations for bulb shapes found in ANSI C79.1–1980 (R1984).

(J) The term ''color rendering index'' or ''CRI'' means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(K) The term ''correlated color temperature'' means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(L) The term ''IES'' means the Illuminating Engineering Society of North America.

(M) The term ''lamp efficacy'' means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(N) The term ''lamp type'' means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(O) The term ''lamp wattage'' means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts.

(P) The terms ''life'' and ''lifetime'' mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume.

(Q) The term ''lumen output'' means total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary.

(R) The term ''tungsten-halogen lamp'' means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(S) The term ''medium base compact fluorescent lamp'' means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

(31)(A) The term ''water use'' means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 6293 of this title.

(B) The term ''ASME'' means the American Society of Mechanical Engineers.

(C) The term ''ANSI'' means the American National Standards Institute.

(D) The term ''showerhead'' means any showerhead (including a handheld showerhead), except a safety shower showerhead.

(E) The term ''faucet'' means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(F) The term ''water closet'' has the meaning given such term in ASME A112.19.2M–1990, except such term does not include fixtures designed for installation in prisons.

(G) The term ''urinal'' has the meaning given such term in ASME A112.19.2M–1990, ex-

cept such term does not include fixtures designed for installation in prisons.

(H) The terms ''blowout'', ''flushometer tank'', ''low consumption'', and ''flushometer valve'' have the meaning given such terms in ASME A112.19.2M–1990.

(Pub. L. 94–163, title III, § 321, Dec. 22, 1975, 89 Stat. 917; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100–12, § 2, Mar. 17, 1987, 101 Stat. 103; Pub. L. 100–357, § 2(a), June 28, 1988, 102 Stat. 671; Pub. L. 102–486, title I, § 123(b), Oct. 24, 1992, 106 Stat. 2817.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

In par. (1), ''section 32901(a)(3) of title 49'' substituted for ''section 501(1) of the Motor Vehicle Information and Cost Savings Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1992—Pub. L. 102–486, § 123(b)(1), in introductory provisions, struck out ''(a)'' before ''For purposes''.

Par. (1). Pub. L. 102–486, § 123(b)(2)(B), which directed amendment of par. (1)(B) by substituting ''ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals'' for ''ballasts'', was executed by making amendment in closing provisions of par. (1), to reflect the probable intent of Congress.

Par. (1)(A). Pub. L. 102–486, § 123(b)(2)(A), inserted ''or, with respect to showerheads, faucets, water closets, and urinals, water'' after ''energy''.

Par. (6). Pub. L. 102–486, § 123(b)(3)(B)(ii), which directed amendment of par. (6)(B) by substituting ''6295(r)'' for ''6295(*o*)'', was executed by making amendment in closing provisions of par. (6), to reflect the probable intent of Congress.

Par. (6)(A). Pub. L. 102–486, § 123(b)(3)(A), inserted '', or, in the case of showerheads, faucets, water closets, and urinals, water use,'' after ''energy use''.

Par. (6)(B). Pub. L. 102–486, § 123(b)(3)(B)(i), substituted ''(15), (16), (17), and (19)'' for ''and (14)''.

Par. (7). Pub. L. 102–486, § 123(b)(4), inserted '', and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually,'' after ''to be consumed annually''.

Pars. (30), (31). Pub. L. 102–486, § 123(b)(5), added pars. (30) and (31).

1988—Subsec. (a)(1). Pub. L. 100–357, § 2(a)(2), inserted before period at end '', except that such term includes fluorescent lamp ballasts distributed in commerce for personal or commercial use or consumption.''

Subsec. (a)(6)(B). Pub. L. 100–357, § 2(a)(3), substituted ''(14)'' for ''(13)''.

Subsec. (a)(29). Pub. L. 100–357, § 2(a)(1), added par. (29).

1987—Subsec. (a)(6). Pub. L. 100–12, § 2(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The term 'energy efficiency standard' means a performance standard—

''(A) which prescribes a minimum level of energy efficiency for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title, and

''(B) which includes any other requirements which the Secretary may prescribe under section 6295(c) of this title.''

Subsec. (a)(19) to (28). Pub. L. 100–12, § 2(b), added pars. (19) to (28).

1978—Subsec. (a)(3), (6)(B), (9). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6311 of this title.

§ 6292. Coverage

(a) In general

The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(A) any type designed to be used without doors; and

(B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Room air conditioners.

(3) Central air conditioners and central air conditioning heat pumps.

(4) Water heaters.

(5) Furnaces.

(6) Dishwashers.

(7) Clothes washers.

(8) Clothes dryers.

(9) Direct heating equipment.

(10) Kitchen ranges and ovens.

(11) Pool heaters.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps and incandescent reflector lamps.

(15) Showerheads, except safety shower showerheads.

(16) Faucets.

(17) Water closets.

(18) Urinals.

(19) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b) of this section.

(b) Special classification of consumer product

(1) The Secretary may classify a type of consumer product as a covered product if he determines that—

(A) classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this chapter, and

(B) average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.

(2) For purposes of this subsection:

(A) The term ''average annual per-household energy use with respect to a type of product[1] means the estimated aggregate annual energy use (in kilowatt-hours or the Btu equivalent) of consumer products of such type which are used by households in the United States, divided by the number of such households which use products of such type.

(B) The Btu equivalent of one kilowatt-hour is 3,412 British thermal units.

[1] So in original. Probably should be followed by closing quotations.

(C) The term ''household'' shall be defined under rules of the Secretary.

(Pub. L. 94–163, title III, § 322, Dec. 22, 1975, 89 Stat. 918; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100–12, §§ 3, 11(b)(1), Mar. 17, 1987, 101 Stat. 105, 125; Pub. L. 100–357, § 2(b), June 28, 1988, 102 Stat. 672; Pub. L. 102–486, title I, § 123(c), Oct. 24, 1992, 106 Stat. 2821.)

AMENDMENTS

1992—Subsec. (a)(14) to (19). Pub. L. 102–486 added pars. (14) to (18) and redesignated former par. (14) as (19).

1988—Subsec. (a)(13), (14). Pub. L. 100–357 added par. (13) and redesignated former par. (13) as (14).

1987—Subsec. (a). Pub. L. 100–12, § 3, inserted heading and amended text generally. Prior to amendment, text read as follows: ''A consumer product is a covered product if it is one of the following types (or is designed to perform a function which is the principal function of any of the following types):

''(1) Refrigerators and refrigerator-freezers.

''(2) Freezers.

''(3) Dishwashers.

''(4) Clothes dryers.

''(5) Water heaters.

''(6) Room air conditioners.

''(7) Home heating equipment, not including furnaces.

''(8) Television sets.

''(9) Kitchen ranges and ovens.

''(10) Clothes washers.

''(11) Humidifiers and dehumidifiers.

''(12) Central aid conditioners.

''(13) Furnaces.

''(14) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b) of this section.''

Subsec. (b). Pub. L. 100–12, § 11(b)(1), inserted heading.

1978—Subsecs. (a)(14), (b)(1), (2)(C). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

ENERGY EFFICIENCY LABELING FOR WINDOWS AND WINDOW SYSTEMS

Section 121 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—(1) The Secretary shall, after consulting with the National Fenestration Rating Council, industry representatives, and other appropriate organizations, provide financial assistance to support a voluntary national window rating program that will develop energy ratings and labels for windows and window systems.

''(2) Such rating program shall include—

''(A) specifications for testing procedures and labels that will enable window buyers to make more informed purchasing decisions about the energy efficiency of windows and window systems; and

''(B) information (which may be disseminated through catalogs, trade publications, labels, or other mechanisms) that will allow window buyers to assess the energy consumption and potential cost savings of alternative window products.

''(3) Such rating program shall be developed by the National Fenestration Rating Council according to commonly accepted procedures for the development of national testing procedures and labeling programs.

''(b) MONITORING.—The Secretary shall monitor and evaluate the efforts of the National Fenestration Rating Council and, not later than one year after the date of the enactment of this Act [Oct. 24, 1992], make a determination as to whether the program developed by the Council is consistent with the objectives of subsection (a).

''(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national window rating program consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for windows and window systems.

''(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the 'Commission') shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for those windows and window systems for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of window or window system (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

''(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

''(4) For purposes of section 327(a) of such Act, the term 'this part' includes this subsection to the extent necessary to carry out this subsection.''

ENERGY EFFICIENCY INFORMATION FOR COMMERCIAL OFFICE EQUIPMENT

Section 125 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—(1) The Secretary shall, after consulting with the Computer and Business Equipment Manufacturers Association and other interested organizations, provide financial and technical assistance to support a voluntary national testing and information program for those types of commercial office equipment that are widely used and for which there is a potential for significant energy savings as a result of such program.

''(2) Such program shall—

''(A) consistent with the objectives of paragraph (1), determine the commercial office equipment to be covered under such program;

''(B) include specifications for testing procedures that will enable purchasers of such commercial office equipment to make more informed decisions about the energy efficiency and costs of alternative products; and

''(C) include information, which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products.

''(3) Such program shall be developed by an appropriate organization (composed of interested parties) according to commonly accepted procedures for the development of national testing procedure and labeling programs.

''(b) MONITORING.—The Secretary shall monitor and evaluate the efforts to develop the program described in subsection (a) and, not later than three years after the date of the enactment of this Act [Oct. 24, 1992], shall make a determination as to whether such program is consistent with the objectives of subsection (a).

''(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national testing and information program for commercial office equipment consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for such commercial office equipment.

''(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal

Trade Commission (hereafter in this section referred to as the 'Commission') shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for commercial office equipment for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of commercial office equipment (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

''(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

''(4) For purposes of section 327(a) of such Act, the term 'this part' includes this subsection to the extent necessary to carry out this subsection.''

ENERGY EFFICIENCY INFORMATION FOR LUMINAIRES

Section 126 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—(1) The Secretary shall, after consulting with the National Electric Manufacturers Association, the American Lighting Association, and other interested organizations, provide financial and technical assistance to support a voluntary national testing and information program for those types of luminaires that are widely used and for which there is a potential for significant energy savings as a result of such program.

''(2) Such program shall—

''(A) consistent with the objectives of paragraph (1), determine the luminaires to be covered under such program;

''(B) include specifications for testing procedures that will enable purchasers of such luminaires to make more informed decisions about the energy efficiency and costs of alternative products; and

''(C) include information, which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products.

''(3) Such program shall be developed by an appropriate organization (composed of interested parties) according to commonly accepted procedures for the development of national testing procedures and labeling programs.

''(b) MONITORING.—The Secretary shall monitor and evaluate the efforts to develop the program described in subsection (a) and, not later than three years after the date of the enactment of this Act [Oct. 24, 1992], shall make a determination as to whether the program developed is consistent with the objectives of subsection (a).

''(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national testing and information program for luminaires consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for such luminaires.

''(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the 'Commission') shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for those luminaires for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of luminaire (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

''(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

''(4) For purposes of section 327(a) of such Act, the term 'this part' includes this subsection to the extent necessary to carry out this subsection.''

REPORT ON POTENTIAL OF COOPERATIVE ADVANCED APPLIANCE DEVELOPMENT

Section 127 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, utilities, and appliance manufacturers, prepare and submit to the Congress, a report on the potential for the development and commercialization of appliances which are substantially more efficient than required by Federal or State law.

''(b) IDENTIFICATION OF HIGH-EFFICIENCY APPLIANCES.—The report submitted under subsection (a) shall identify candidate high-efficiency appliances which meet the following criteria:

''(1) The potential exists for substantial improvement in the appliance's energy efficiency, beyond the minimum established in Federal and State law.

''(2) There is the potential for significant energy savings at the national or regional level.

''(3) Such appliances are likely to be cost-effective for consumers.

''(4) Electric, water, or gas utilities are prepared to support and promote the commercialization of such appliances.

''(5) Manufacturers are unlikely to undertake development and commercialization of such appliances on their own, or development and production would be substantially accelerated by support to manufacturers.

''(c) RECOMMENDATIONS AND PROPOSALS.—The report submitted under subsection (a) shall also—

''(1) describe the general actions the Secretary or the Administrator of the Environmental Protection Agency could take to coordinate and assist utilities and appliance manufacturers in developing and commercializing highly efficient appliances;

''(2) describe specific proposals for Department of Energy or Environmental Protection Agency assistance to utilities and appliance manufacturers to promote the development and commercialization of highly efficient appliances;

''(3) identify methods by which Federal purchase of highly efficient appliances could assist in the development and commercialization of such appliances; and

''(4) identify the funding levels needed to develop and implement a Federal program to assist in the development and commercialization of highly efficient appliances.''

EVALUATION OF UTILITY EARLY REPLACEMENT PROGRAMS FOR APPLIANCES

Section 128 of Pub. L. 102–486 provided that: ''Within 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary, in consultation with the Administrator of the Environmental Protection Agency, utilities, and appliance manufacturers, shall evaluate and report to the Congress on the energy savings and environmental benefits of programs which are directed to the early replacement of older, less efficient appliances presently in use by consumers with existing products which are more efficient than required by Federal law. For the purposes of this section, the term 'appliance' means those consumer products specified in section 322(a) [42 U.S.C. 6292(a)].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6293, 6294, 6295, 6317 of this title.

§ 6293. Test procedures

(a) General rule

All test procedures and related determinations prescribed or made by the Secretary with respect to any covered product (or class thereof) which are in effect on March 17, 1987, shall remain in effect until the Secretary amends such test procedures and related determinations under subsection (b) of this section.

(b) Amended and new procedures

(1)(A) The Secretary may amend test procedures with respect to any covered product if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3).

(B) The Secretary may, in accordance with the requirements of this subsection, prescribe test procedures for any consumer product classified as a covered product under section 6292(b) of this title.

(C) The Secretary shall direct the National Institute of Standards and Technology to assist in developing new or amended test procedures.

(2) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the Federal Register proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period shall not be less than 60 days and may be extended for good cause shown to not more than 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved.

(3) Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct.

(4) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use or, in the case of showerheads, faucets, water closets, or urinals, water use in a representative average use cycle or period of use, as determined by the Secretary, and from representative average unit costs of the energy needed to operate such product during such cycle, or in the case of showerheads, faucets, water closets, or urinals, representative average unit costs of water and wastewater treatment service resulting from the operation of such products during such cycle. The Secretary shall provide information to manufacturers with respect to representative average unit costs of energy, water, and wastewater treatment.

(5) With respect to fluorescent lamp ballasts manufactured on or after January 1, 1990, and to which standards are applicable under section 6295 of this title, the Secretary shall prescribe test procedures that are in accord with ANSI standard C82.2–1984 or other test procedures determined appropriate by the Secretary.

(6) With respect to fluorescent lamps and incandescent reflector lamps to which standards are applicable under subsection (i) of section 6295 of this title, the Secretary shall prescribe test procedures, to be carried out by accredited test laboratories, that take into consideration the applicable IES or ANSI standard.

(7)(A) Test procedures for showerheads and faucets to which standards are applicable under subsection (j) of section 6295 of this title shall be the test procedures specified in ASME A112.18.1M–1989 for such products.

(B) If the test procedure requirements of ASME A112.18.1M–1989 are revised at any time and approved by ANSI, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such revised ASME/ANSI requirements unless the Secretary determines, by rule, that to do so would not meet the requirements of paragraph (3).

(8)(A) Test procedures for water closets and urinals to which standards are applicable under subsection (k) of section 6295 of this title shall be the test procedures specified in ASME A112.19.6–1990 for such products.

(B) If the test procedure requirements of ASME A112.19.6–1990 are revised at any time and approved by ANSI, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such revised ASME/ANSI requirements unless the Secretary determines, by rule, that to do so would not meet the requirements of paragraph (3).

(c) Restriction on certain representations

(1) No manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label); or

(B) in any broadcast advertisement,

with respect to the energy use or efficiency or, in the case of showerheads, faucets, water closets, and urinals, water use of a covered product to which a test procedure is applicable under subsection (a) of this section or the cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) Effective 180 days after an amended or new test procedure applicable to a covered product is prescribed or established under subsection (b) of this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label); or

(B) in any broadcast advertisement,

with respect to energy use or efficiency or, in the case of showerheads, faucets, water closets, and urinals, water use of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such

amended or new test procedures and such representation fairly discloses the results of such testing.

(3) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (2) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements of paragraph (2) would impose an undue hardship on such petitioner.

(d) Case in which test procedure is not required

(1) The Secretary is not required to publish and prescribe test procedures for a covered product (or class thereof) if the Secretary determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b)(3) of this section and publishes such determination in the Federal Register, together with the reasons therefor.

(2) For purposes of section 6297 of this title, a determination under paragraph (1) with respect to any covered product or class shall have the same effect as would a standard prescribed for a covered product (or class).

(e) Amendment of standard

(1) In the case of any amended test procedure which is prescribed pursuant to this section, the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure.

(2) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products.

(3) Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

(4) The Secretary's authority to amend energy conservation standards under this subsection shall not affect the Secretary's obligation to issue final rules as described in section 6295 of this title.

(Pub. L. 94–163, title III, § 323, Dec. 22, 1975, 89 Stat. 919; Pub. L. 95–619, title IV, §§ 421, 425(a), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3257, 3265, 3288; Pub. L. 100–12, § 4, Mar. 17, 1987, 101 Stat. 105; Pub. L. 100–357, § 2(c), June 28, 1988, 102 Stat. 672; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–486, title I, § 123(d), Oct. 24, 1992, 106 Stat. 2821.)

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102–486, § 123(d)(1)(A), inserted ''water use (in the case of showerheads, faucets, water closets and urinals),'' after ''energy use,''.

Subsec. (b)(4). Pub. L. 102–486, § 123(d)(1)(B), in first sentence inserted ''or, in the case of showerheads, faucets, water closets, or urinals, water use'' after ''energy use'' and '', or in the case of showerheads, faucets, water closets, or urinals, representative average unit costs of water and wastewater treatment service resulting from the operation of such products during such cycle'' after ''such cycle'', and in second sentence inserted '', water, and wastewater treatment'' before period at end.

Subsec. (b)(6) to (8). Pub. L. 102–486, § 123(d)(1)(C), added pars. (6) to (8).

Subsec. (c)(1). Pub. L. 102–486, § 123(d)(2), in closing provisions inserted ''or, in the case of showerheads, faucets, water closets, and urinals, water use'' after ''efficiency''.

Subsec. (c)(2). Pub. L. 102–486, § 123(d)(3), in introductory provisions substituted ''prescribed or established'' for ''prescribed''.

Pub. L. 102–486, § 123(d)(2), in closing provisions inserted ''or, in the case of showerheads, faucets, water closets, and urinals, water use'' after ''efficiency''.

Subsec. (e)(1) to (3). Pub. L. 102–486, § 123(d)(4), substituted '', measured energy use, or measured water use'' for ''or measured energy use'' in par. (1) and ''energy efficiency, energy use, or water use'' for ''energy efficiency or energy use'' in two places in par. (2) and once in par. (3).

1988—Subsec. (b)(1)(C). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

Subsec. (b)(5). Pub. L. 100–357 added par. (5).

1987—Pub. L. 100–12 amended section generally, revising and restating as subsecs. (a) to (e) provisions formerly contained in subsecs. (a) to (c).

1978—Subsec. (a)(1), (2). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (a)(3). Pub. L. 95–619, §§ 425(a), 691(b)(2), struck out ''Except as provided in paragraph (6),'' before ''The Secretary'', struck out provision requiring proposed test procedures to be published not later than June 30, 1976, with certain excepted cases not required to be published before Sept. 30, 1976 and June 30, 1977, and substituted ''Secretary'' for ''Administrator''.

Subsec. (a)(4). Pub. L. 95–619, §§ 421(a), 691(b)(2), redesignated provisions formerly classified to subpar. (A), as par. (4) and in par. (4), as so redesignated, struck out ''Except as provided in paragraph (6),'' before ''The Secretary shall'', substituted ''Secretary'' for ''Administrator'' in two places, inserted provision requiring the prescription of test procedures not later than Jan. 31, 1978, and struck out subpar. (B) requiring the prescription of test procedures not later than Sept. 30, 1976, with certain excepted cases required to be prescribed not later than Dec. 31, 1976 and Sept. 30 1977.

Subsec. (a)(5). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

Subsec. (a)(6). Pub. L. 95–619, § 421(b), redesignated existing provisions as subpar. (A) and, in subpar. (A) as so redesignated, substituted ''Secretary'' for ''Administrator'', struck out provisions relating to the authority to delay publication of proposed test procedures, inserted requirement that a determination of a necessary prescription delay be submitted in a report to Congress, inserted specific ninety day time limitation for delayed prescriptions, and added subpar. (B).

Subsec. (a)(7). Pub. L. 95–619, § 421(c), added par. (7).

Subsec. (b). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

Subsec. (c). Pub. L. 95–619, § 421(d), redesignated existing provisions as par. (1), substituted ''180 days'' for ''90 days'' and redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6294, 6295, 6296, 6297, 6303, 6306, 6314, 6316 of this title.

§ 6294. Labeling

(a) In general

(1) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (1), (2), (4), (6), and (8) through (12) of section 6292(a) of this title, except to the extent that, with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible.

(2)(A) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (3), (5), and (7) of section 6292(a) of this title, except to the extent that with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.

(B) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (13) of section 6292(a) of this title and to which standards are applicable under section 6295 of this title. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) of this section by July 1, 1989, a capital letter ''E'' printed within a circle on the ballast and on the packaging of the ballast or of the luminaire into which the ballast has been incorporated.

(C)(i) Not later than 18 months after October 24, 1992, the Commission shall prescribe labeling rules under this section applicable to general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps. Except as provided in clause (ii), such rules shall provide that the labeling of any general service fluorescent lamp, medium base compact fluorescent lamp, and general service incandescent lamp manufactured after the 12-month period beginning on the date of the publication of such rule shall indicate conspicuously on the packaging of the lamp, in a manner prescribed by the Commission under subsection (b) of this section, such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements. Labeling information for incandescent lamps shall be based on performance when operated at 120 volts input, regardless of the rated lamp voltage.

(ii) If the Secretary determines that compliance with the standards specified in section 6295(j) of this title for any lamp will result in the discontinuance of the manufacture of such lamp, the Commission may exempt such lamp from the labeling rules prescribed under clause (i).

(D)(i) Not later than one year after October 24, 1992, the Commission shall prescribe labeling rules under this section for showerheads and faucets to which standards are applicable under subsection (j) of section 6295 of this title. Such rules shall provide that the labeling of any showerhead or faucet manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.18.1M–1989, except that each showerhead and flow restricting or controlling spout-end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 6295 of this title.

(ii) If the marking and labeling requirements of ASME A112.18.1M–1989 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this chapter or the requirement specified in clause (i) requiring each showerhead and flow restricting or controlling spout-end device to bear a permanent legible marking indicating the flow rate of such product.

(E)(i) Not later than one year after October 24, 1992, the Commission shall prescribe labeling rules under this section for water closets and urinals to which standards are applicable under subsection (k) of section 6295 of this title. Such rules shall provide that the labeling of any water closet or urinal manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.19.2M–1990, except that each fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the water use, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 6295 of this title.

(ii) If the marking and labeling requirements of ASME A112.19.2M–1990 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this chapter or the requirement specified in clause (i) requiring each fixture and flushometer valve to bear a permanent legible marking indicating the water use of such fixture or flushometer valve.

(iii) Any labeling rules prescribed under this subparagraph before January 1, 1997, shall provide that, with respect to any gravity tank-type

white 2-piece toilet which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point of sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words ''For Commercial Use Only''.

(3) The Commission may prescribe a labeling rule under this section applicable to covered products of a type specified in paragraph (19) of section 6292(a) of this title (or a class thereof) if—

(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) that labeling in accordance with this section will assist purchasers in making purchasing decisions,

(B) the Secretary has prescribed test procedures under section 6293(b)(1)(B) of this title for such type (or class thereof), and

(C) the Commission determines with respect to such type (or class thereof) that application of labeling rules under this section to such type (or class thereof) is economically and technologically feasible.

(4) Any determination under this subsection shall be published in the Federal Register.

(b) Rules in effect; new rules

(1)(A) Any labeling rule in effect on March 17, 1987, shall remain in effect until amended, by rule, by the Commission.

(B) After March 17, 1987, and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (13), and paragraphs (15) through (19) of section 6292(a) of this title (or class thereof) is prescribed under section 6293(b) of this title, the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).

(2) The Commission shall afford interested persons an opportunity to present written or oral data, views, and comments with respect to the proposed labeling rules published under paragraph (1). The period for such presentations shall not be less than 45 days.

(3) Not earlier than 45 days nor later than 60 days after the date on which test procedures are prescribed under section 6293(b) of this title with respect to covered products of any type (or class thereof) specified in paragraphs (1) through (12) of section 6292(a) of this title, the Commission shall prescribe labeling rules with respect to covered products of such type (or class thereof). Not earlier than 45 days after the date on which test procedures are prescribed under section 6293(b) of this title with respect to covered products of a type specified in paragraph (19) of section 6292(a) of this title, the Commission may prescribe labeling rules with respect to covered products of such type (or class thereof).

(4) A labeling rule prescribed under paragraph (3) shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Commission determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(5) The Commission may delay the publication of a proposed labeling rule, or the prescription of a labeling rule, beyond the dates specified in paragraph (1) or (3), if it determines that it cannot publish proposed labeling rules or prescribe labeling rules which meet the requirements of this section on or prior to the date specified in the applicable paragraph and publishes such determination in the Federal Register, together with the reasons therefor. In any such case, it shall publish proposed labeling rules or prescribe labeling rules for covered products of such type (or class thereof) as soon as practicable unless it determines (A) that labeling in accordance with this section is not economically or technically feasible, or (B) in the case of a type specified in paragraphs (3), (5), and (7) of section 6292(a) of this title, that labeling in accordance with this section is not likely to assist consumers in purchasing decisions. Any such determination shall be published in the Federal Register, together with the reasons therefor. This paragraph shall not apply to the prescription of a labeling rule with respect to covered products of a type specified in paragraph (19) of section 6292(a) of this title.

(c) Content of label

(1) Subject to paragraph (6), a rule prescribed under this section shall require that each covered product in the type or class of covered products to which the rule applies bear a label which discloses—

(A) the estimated annual operating cost of such product (determined in accordance with test procedures prescribed under section 6293 of this title), except that if—

(i) the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or

(ii) the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible,

the Commission shall require disclosure of a different useful measure of energy consumption (determined in accordance with test procedures prescribed under section 6293 of this title); and

(B) information respecting the range of estimated annual operating costs for covered products to which the rule applies; except that if the Commission requires disclosure under subparagraph (A) of a measure of energy consumption different from estimated annual operating cost, then the label shall disclose the range of such measure of energy consumption of covered products to which such rule applies.

(2) A rule under this section shall include the following:

(A) A description of the type or class of covered products to which such rule applies.

(B) Subject to paragraph (6), information respecting the range of estimated annual operating costs or other useful measure of energy consumption (determined in such manner as the rule may prescribe) for such type or class of covered products.

(C) A description of the test procedures under section 6293 of this title used in deter-

mining the estimated annual operating costs or other measure of energy consumption of the type or class of covered products.

(D) A prototype label and directions for displaying such label.

(3) A rule under this section shall require that the label be displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions and is appropriate to carry out this part. The Commission may permit a tag to be used in lieu of a label in any case in which the Commission finds that a tag will carry out the purposes for which the label was intended.

(4) A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product. Requirements under this paragraph shall not apply to any broadcast advertisement or any advertisement in any newspaper, magazine, or other periodical.

(5) The Commission may require that a manufacturer of a covered product to which a rule under this section applies—

(A) include on the label,

(B) separately attach to the product, or

(C) ship with the product,

additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product, if the Commission determines that such additional information would assist consumers in making purchasing decisions or in using such product, and that such requirement would not be unduly burdensome to manufacturers.

(6) The Commission may delay the effective date of the requirement specified in paragraph (1)(B) of this subsection applicable to a type or class of covered product, insofar as it requires the disclosure on the label of information respecting range of a measure of energy consumption, for not more than 12 months after the date on which the rule under this section is first applicable to such type or class, if the Commission determines that such information will not be available within an adequate period of time before such date.

(7) Paragraphs (1), (2), (3), (5), and (6) of this subsection shall not apply to the covered product specified in paragraphs (13), (14), (15), (16), (17), and (18) of section 6292(a) of this title.

(8) If a manufacturer of a covered product specified in paragraph (15) or (17) of section 6292(a) of this title elects to provide a label for such covered product conveying the estimated annual operating cost of such product or the range of estimated annual operating costs for the type or class of such product—

(A) such estimated cost or range of costs shall be determined in accordance with test procedures prescribed under section 6293 of this title;

(B) the format of such label shall be in accordance with a format prescribed by the Commission; and

(C) such label shall be displayed in a manner, prescribed by the Commission, to be likely to assist consumers in making purchasing decisions and appropriate to carry out the purposes of this chapter.

(d) Effective date

A rule under this section (or an amendment thereto) shall not apply to any covered product the manufacture of which was completed prior to the effective date of such rule or amendment, as the case may be.

(e) Study of certain products

The Secretary, in consultation with the Commission, shall study consumer products for which labeling rules under this section have not been proposed, in order to determine (1) the aggregate energy consumption of such products, and (2) whether the imposition of labeling requirements under this section would be feasible and useful to consumers in making purchasing decisions. The Secretary shall include the results of such study in the annual report under section 6308 of this title.

(f) Consultation

The Secretary and the Commission shall consult with each other on a continuing basis as may be necessary or appropriate to carry out their respective responsibilities under this part. Before the Commission makes any determination under subsection (a)(1) of this section, it shall obtain the views of the Secretary and shall take such views into account in making such determination.

(g) Other authority of the Commission

Until such time as labeling rules under this section take effect with respect to a type or class of covered product, this section shall not affect any authority of the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to require labeling with respect to energy consumption of such type or class of covered product.

(Pub. L. 94–163, title III, §324, Dec. 22, 1975, 89 Stat. 920; Pub. L. 95–619, title IV, §425(b), (c), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288; Pub. L. 100–12, §11(a)(1), (b)(2), Mar. 17, 1987, 101 Stat. 124, 125; Pub. L. 100–357, §2(d), June 28, 1988, 102 Stat. 672; Pub. L. 102–486, title I, §123(e), Oct. 24, 1992, 106 Stat. 2822.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(D)(ii), (E)(ii) and (c)(8)(C), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (g), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

1992—Subsec. (a)(2)(C) to (E). Pub. L. 102–486, §123(e)(1), added subpars. (C) to (E).

Subsec. (a)(3). Pub. L. 102–486, §123(e)(2), substituted ''(19)'' for ''(14)''.

Subsec. (b)(1)(B). Pub. L. 102–486, §123(e)(3), substituted ''(13), and paragraphs (15) through (19)'' for ''(14)''.

Subsec. (b)(3), (5). Pub. L. 102–486, §123(e)(4), substituted ''(19)'' for ''(14)''.

Subsec. (c)(7). Pub. L. 102–486, §123(e)(5)(A), substituted ''paragraphs (13), (14), (15), (16), (17), and (18) of section 6292(a)'' for ''paragraph (13) of section 6292''.

Subsec. (c)(8). Pub. L. 102–486, §123(e)(5)(B), added par. (8).

1988—Subsec. (a)(2). Pub. L. 100–357, §2(d)(1), designated existing provision as subpar. (A) and added subpar. (B).

Subsecs. (a)(3), (b)(1)(B), (3), (5). Pub. L. 100–357, §2(d)(2), substituted ''(14)'' for ''(13)''.

Subsec. (c)(7). Pub. L. 100–357, §2(d)(3), added par. (7).

1987—Subsec. (a). Pub. L. 100–12, §11(b)(2)(A), inserted heading.

Subsec. (a)(1). Pub. L. 100–12, §11(a)(1)(A), substituted ''paragraphs (1), (2), (4), (6), and (8) through (12)'' for ''paragraphs (1) through (9)''.

Subsec. (a)(2). Pub. L. 100–12, §11(a)(1)(B), substituted ''paragraphs (3), (5), and (7)'' for ''paragraphs (10) through (13)''.

Subsec. (a)(3). Pub. L. 100–12, §11(a)(1)(C)(i), substituted ''paragraph (13)'' for ''paragraph (14)''.

Subsec. (a)(3)(A). Pub. L. 100–12, §11(a)(1)(C)(ii), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the Commission or the Secretary has made a determination with respect to such type (or class thereof) under section 6293(a)(5)(B) of this title,''.

Subsec. (a)(3)(B). Pub. L. 100–12, §11(a)(1)(C)(iii), substituted ''section 6293(b)(1)(B)'' for ''section 6293(a)(5)''.

Subsec. (b). Pub. L. 100–12, §11(a)(1)(D), inserted heading.

Subsec. (b)(1). Pub. L. 100–12, §11(a)(1)(D), added par. (1) and struck out former par. (1) which read as follows: ''Not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (14) of section 6292(a) of this title (or class thereof) is published under section 6293(a) of this title, the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).''

Subsec. (b)(3). Pub. L. 100–12, §11(a)(1)(E), substituted ''section 6293(b)'' for ''section 6293'' in two places, ''(12)'' for ''(13)'', and ''(13)'' for ''(14)''.

Subsec. (b)(5). Pub. L. 100–12, §11(a)(1)(F), substituted ''(3), (5), and (7)'' for ''(10) through (13)'' and ''(13)'' for ''(14)''.

Subsec. (c). Pub. L. 100–12, §11(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 100–12, §11(b)(2)(C), inserted heading.

Subsec. (e). Pub. L. 100–12, §11(b)(2)(D), inserted heading.

Subsec. (f). Pub. L. 100–12, §11(b)(2)(E), inserted heading.

Pub. L. 100–12, §11(a)(1)(G), struck out ''or (2)'' after ''subsection (a)(1)''.

Subsec. (g). Pub. L. 100–12, §11(b)(2)(F), inserted heading.

1978—Subsec. (a)(1), (2). Pub. L. 95–619, §425(b), struck out labeling rule exception where Administrator had determined under section 6293(a)(6) of this title that test procedures could not be developed pursuant to section 6293(b) of this title.

Subsec. (a)(3). Pub. L. 95–619, §691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, in cls. (A) and (B).

Subsec. (c)(1)(A)(i). Pub. L. 95–619, §691(b)(2), substituted ''Secretary'' for ''Administrator''.

Subsec. (c)(5). Pub. L. 95–619, §425(c), inserted ''including instructions for the maintenance, use, or repair of the covered product,'' after ''energy consumption''.

Subsecs. (e), (f). Pub. L. 95–619, §691(b)(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6293, 6295, 6296, 6297, 6302, 6304, 6306, 6316, 6317 of this title.

§ 6295. Energy conservation standards

(a) Purposes

The purposes of this section are to—

(1) provide Federal energy conservation standards applicable to covered products; and

(2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

(b) Standards for refrigerators, refrigerator-freezers, and freezers

(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

	Energy Standards Equations
Refrigerators and Refrigerator-Freezers with manual defrost	16.3 AV+316
Refrigerator-Freezers—partial automatic defrost	21.8 AV+429
Refrigerator-Freezers—automatic defrost with:	
Top mounted freezer without ice	23.5 AV+471
Side mounted freezer without ice	27.7 AV+488
Bottom mounted freezer without ice	27.7 AV+488
Top mounted freezer with through the door ice service	26.4 AV+535
Side mounted freezer with through the door ice	30.9 AV+547
Upright Freezers with:	
Manual defrost	10.9 AV+422
Automatic defrost	16.0 AV+623
Chest Freezers and all other freezers	14.8 AV+223

(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not

more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(c) Standards for room air conditioners

(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

Product Class:	Ratio
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	9.0
14,000 to 19,999 Btu	8.8
20,000 and more Btu	8.2
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	8.5
14,000 to 19,999 Btu	8.5
20,000 and more Btu	8.2
With Reverse Cycle and With Louvered Sides	8.5
With Reverse Cycle, Without Louvered Sides	8.0

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(d) Standards for central air conditioners and heat pumps

(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

(e) Standards for water heaters; pool heaters; direct heating equipment

(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

(A) Gas Water Heater:	.62 − (.0019 x Rated Storage Volume in gallons)
(B) Oil Water Heater:	.59 − (.0019 x Rated Storage Volume in gallons)
(C) Electric Water Heater:	.95 − (.00132 x Rated Storage Volume in gallons)

(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

Wall	
Fan type	
Up to 42,000 Btu/hour	73% AFUE
Over 42,000 Btu/hour	74% AFUE
Gravity type	
Up to 10,000 Btu/hour	59% AFUE
Over 10,000 Btu/hour up to 12,000 Btu/hour	60% AFUE
Over 12,000 Btu/hour up to 15,000 Btu/hour	61% AFUE
Over 15,000 Btu/hour up to 19,000 Btu/hour	62% AFUE
Over 19,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE
Floor	
Up to 37,000 Btu/hour	56% AFUE
Over 37,000 Btu/hour	57% AFUE
Room	
Up to 18,000 Btu/hour	57% AFUE
Over 18,000 Btu/hour up to 20,000 Btu/hour	58% AFUE
Over 20,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE

(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by paragraphs[1] (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005.

(f) Standards for furnaces

(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that—

(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 75 percent; and

(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard—

(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992;

(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent; and

(iii) which the Secretary determines is not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement.

(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1, 1990, shall have an annual fuel utilization efficiency of not less than 75 percent.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994.

(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

(C) After January 1, 1997, and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

(g) Standards for dishwashers; clothes washers; clothes dryers; fluorescent lamp ballasts

(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

(B) After January 1, 1990, the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(C) Any such amendment shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such standard.

(5) Except as provided in paragraph (6), each fluorescent lamp ballast—

[1] So in original. Probably should be ''paragraph''.

(A)(i) manufactured on or after January 1, 1990;

(ii) sold by the manufacturer on or after April 1, 1990; or

(iii) incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(B) designed—

(i) to operate at nominal input voltages of 120 or 277 volts;

(ii) to operate with an input current frequency of 60 Hertz; and

(iii) for use in connection with an F40T12, F96T12, or F96T12HO lamps;

shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for Operation of	Ballast Input Voltage	Total Nominal Lamp Watts	Ballast Efficacy Factor
one F40T12 lamp	120	40	1.805
	277	40	1.805
two F40T12 lamps	120	80	1.060
	277	80	1.050
two F96T12 lamps	120	150	0.570
	277	150	0.570
two F96T12HO lamps	120	220	0.390
	277	220	0.390

(6) The standards described in paragraph (5) do not apply to (A) a ballast which is designed for dimming or for use in ambient temperatures of 0° F or less, or (B) a ballast which has a power factor of less than 0.90 and is designed for use only in residential building applications.

(7)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (5) should be amended, including whether such standards should be amended so that they would be applicable to ballasts described in paragraph (6) and other fluorescent lamp ballasts. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for fluorescent lamp ballasts, including whether such standards should be amended so that they would be applicable to additional fluorescent lamp ballasts.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(h) Standards for kitchen ranges and ovens

(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

(i) General service fluorescent lamps and incandescent reflector lamps

(1)(A) Each of the following general service fluorescent lamps and incandescent reflector lamps manufactured after the effective date specified in the tables listed in this paragraph shall meet or exceed the following lamp efficacy and CRI standards:

FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
4-foot medium bi-pin	>35 W	69	75.0	36
	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
	≤100 W	45	80.0	18

INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

(B) For the purposes of the tables set forth in subparagraph (A), the term ''effective date'' means the last day of the month set forth in the table which follows October 24, 1992.

(2) Notwithstanding section 6302(a)(5) of this title and section 6302(b) of this title, it shall not be unlawful for a manufacturer to sell a lamp which is in compliance with the law at the time such lamp was manufactured.

(3) Not less than 36 months after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on October 24, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(4) Not less than eight years after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than nine years and six months after October 24, 1992, to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(5) Not later than the end of the 24-month period beginning on the date labeling requirements under section 6294(a)(2)(C) of this title become effective, the Secretary shall initiate a rulemaking procedure to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended so that they would be applicable to additional general service fluorescent and general service incandescent lamps and shall publish, not later than 18 months after initiating such rulemaking, a final rule including such amended standards, if any. Such rule shall provide that the amendment shall apply to products manufactured after a date which is 36 months after the date such rule is published.

(6)(A) With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 6317 of this title, the Secretary shall inform any Federal entity proposing actions which would adversely impact the energy consumption or energy efficiency of such lamp of the energy conservation consequences of such action. It shall be the responsibility of such Federal entity to carefully consider the Secretary's comments.

(B) Notwithstanding subsection (n)(1) of this section, the Secretary shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if such action is warranted as a result of other Federal action (including restrictions on materials or processes) which would have the effect of either increasing the energy use or decreasing the energy efficiency of such product.

(7) Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 6317 of this title, the effective date of standards established pursuant to such section, each manufacturer of a product to which such standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type. Such report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period. With respect to lamp types which are not manufactured during the 12-month period preceding the date such standards become effective, such report shall be filed with the Secretary not later than the date which is 12 months after the date manufacturing is commenced and shall include the lumen output and wattage consumption for each such lamp type as an average of measurements taken during such 12-month period.

(j) Standards for showerheads and faucets

(1) The maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gallons per minute when measured at a flowing water pressure of 80 pounds per square inch. Any such showerhead shall also meet the requirements of ASME/ANSI A112.18.1M–1989, 7.4.3(a).

(2) The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 80 pounds per square inch, is as follows:

Lavatory faucets	2.5 gallons per minute
Lavatory replacement aerators.	2.5 gallons per minute
Kitchen faucets	2.5 gallons per minute
Kitchen replacement aerators	2.5 gallons per minute
Metering faucets	0.25 gallons per cycle

(3)(A) If the maximum flow rate requirements or the design requirements of ASME/ANSI Standard A112.18.1M–1989 are amended to improve the efficiency of water use of any type or class of showerhead or faucet and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in the amended ASME/ANSI Standard A112.18.1M and providing that such standard shall apply to products manufactured after a date which is 12 months after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.18.1M—

(i) is not technologically feasible and economically justified under subsection (*o*) of this section;

(ii) is not consistent with the maintenance of public health and safety; or

(iii) is not consistent with the purposes of this chapter.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of showerhead or faucet more stringent than such amended ASME/ANSI Standard A112.18.1M—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (*o*) of this section; and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.18.1M for such type or class of showerhead or faucet and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(C) If, after any period of five consecutive years, the maximum flow rate requirements of the ASME/ANSI standard for showerheads are not amended to improve the efficiency of water use of such products, or after any such period such requirements for faucets are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

(i) is more stringent than the standards in effect for such type of class of showerhead or faucet; and

(ii) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(k) Standards for water closets and urinals

(1)(A) Except as provided in subparagraph (B), the maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, is the following:

Gravity tank-type toilets	1.6 gpf.
Flushometer tank toilets	1.6 gpf.
Electromechanical hydraulic toilets	1.6 gpf.
Blowout toilets	3.5 gpf.

(B) The maximum water use allowed for any gravity tank-type white 2-piece toilet which bears an adhesive label conspicuous upon installation consisting of the words ''Commercial Use Only'' manufactured after January 1, 1994, and before January 1, 1997, is 3.5 gallons per flush.

(C) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, is 1.6 gallons per flush.

(2) The maximum water use allowed for any urinal manufactured after January 1, 1994, is 1.0 gallon per flush.

(3)(A) If the maximum flush volume requirements of ASME Standard A112.19.6–1990 are amended to improve the efficiency of water use of any low consumption water closet or low consumption urinal and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in amended ASME/ANSI Standard A112.19.6 and providing that such standard shall apply to products manufactured after a date which is one year after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.19.6—

(i) is not technologically feasible and economically justified under subsection (*o*) of this section;

(ii) is not consistent with the maintenance of public health and safety; or

(iii) is not consistent with the purposes of this chapter.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of low consumption water closet or low consumption urinal more stringent than such amended ASME/ANSI Standard A112.19.6 for such product—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (*o*) of this section; and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of low consumption water closet or low consumption urinal if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.19.6 for such type or class of low consumption water closet or low consumption urinal and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of low consumption water closet or low consumption urinal.

(C) If, after any period of five consecutive years, the maximum flush volume requirements

of the ASME/ANSI standard for low consumption water closets are not amended to improve the efficiency of water use of such products, or after any such period such requirements for low consumption urinals are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of water closet or urinal if such State regulation—

(i) is more stringent than the standards in effect for such type or class of water closet or urinal; and

(ii) is applicable to any sale or installation of all products in such type or class of water closet or urinal.

(*l*) Standards for other covered products

(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (19) of section 6292(a) of this title if the requirements of subsections (*o*) and (p) of this section are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 6294 of this title to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

(2) Any new or amended standard for covered products of a type specified in paragraph (19) of section 6292(a) of this title shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

(3) The Secretary may, in accordance with subsections (*o*) and (p) of this section, prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

(m) Further rulemaking

After issuance of the last final rules required under subsections (b) through (i) of this section, the Secretary may publish final rules to determine whether standards for a covered product should be amended. An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

(A) the effective date of the previous amendment made pursuant to this part; or

(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

(n) Petition for amended standard

(1) With respect to each covered product described in paragraphs (1) through (11), and in paragraphs (13) and (14) of section 6292(a) of this title, any person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (i) of this section or in a final rule published under this section should be amended.

(2) The Secretary shall grant a petition if he finds that it contains evidence which, assuming no other evidence were considered, provides an adequate basis for amending the standards under the following criteria—

(A) amended standards will result in significant conservation of energy;

(B) amended standards are technologically feasible; and

(C) amended standards are cost effective as described in subsection (*o*)(2)(B)(i)(II) of this section.

The grant of a petition by the Secretary under this subsection creates no presumption with respect to the Secretary's determination of any of the criteria in a rulemaking under this section.

(3) An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

(A) the effective date of the previous amendment pursuant to this part; or

(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

(*o*) Criteria for prescribing new or amended standards

(1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals,

water use, or decreases the minimum required energy efficiency, of a covered product.

(2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency, or, in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.

(B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 6293 of this title with respect to that type (or class) of product; or

(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or, in the case of showerheads, faucets, water closets, or urinals, water, or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 6297 of this title, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

(p) Procedure for prescribing new or amended standards

Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

(1) The Secretary—

(A) shall publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule may apply;

(B) shall invite interested persons to submit, within 60 days after the date of publication of such advance notice, written presentations of data, views, and arguments in response to such notice; and

(C) may identify proposed or amended standards that may be prescribed.

(2) A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

(3) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 6306 of this title, afford interested persons an opportunity, during a pe-

riod of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (*o*)(2) of this section) or will result in the effects described in subsection (*o*)(4) of this section;

(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

(4) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

(q) Special rule for certain types or classes of products

(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(r) Inclusion in standards of test procedures and other requirements

Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 6293 of this title and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

(s) Determination of compliance with standards

Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under, this section shall be determined using the test procedures and corresponding compliance criteria prescribed under section 6293 of this title.

(t) Small manufacturer exemption

(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed $8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

(Pub. L. 94–163, title III, § 325, Dec. 22, 1975, 89 Stat. 923; Pub. L. 94–385, title I, § 161, Aug. 14, 1976, 90 Stat. 1140; Pub. L. 95–619, title IV, § 422, Nov. 9, 1978, 92 Stat. 3259; Pub. L. 100–12, § 5, Mar. 17, 1987, 101 Stat. 107; Pub. L. 100–357, § 2(e), June 28, 1988, 102 Stat. 673; Pub. L. 102–486, title I, § 123(f), Oct. 24, 1992, 106 Stat. 2824.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (j)(3)(A)(iii) and (k)(3)(A)(iii), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1992—Subsecs. (i) to (k). Pub. L. 102–486, § 123(f)(2), added subsecs. (i) to (k). Former subsecs. (i) to (k) redesignated (*l*) to (n), respectively.

Subsec. (*l*). Pub. L. 102–486, § 123(f)(1), redesignated subsec. (i) as (*l*). Former subsec. (*l*) redesignated (*o*).

Subsec. (*l*)(1). Pub. L. 102–486, § 123(f)(3), substituted ''paragraph (19)'' for ''paragraph (14)'' and ''subsections (*o*) and (p)'' for ''subsections (*l*) and (m)''.

Subsec. (*l*)(2). Pub. L. 102–486, § 123(f)(3)(A), substituted ''(19)'' for ''(14)''.

Subsec. (*l*)(3). Pub. L. 102–486, § 123(f)(3)(B), substituted ''(*o*) and (p)'' for ''(*l*) and (m)''.

Subsec. (m). Pub. L. 102–486, §123(f)(1), (4), redesignated subsec. (j) as (m) and substituted ''(i)'' for ''(h)'' in introductory provisions. Former subsec. (m) redesignated (p).

Subsec. (n). Pub. L. 102–486, §123(f)(1), redesignated subsec. (k) as (n). Former subsec. (n) redesignated (q).

Subsec. (n)(1). Pub. L. 102–486, §123(f)(5)(A), substituted '', and in paragraphs (13) and (14)'' for ''and in paragraph (13)'' and ''subsections (b) through (i)'' for ''subsections (b) through (h)''.

Subsec. (n)(2)(C). Pub. L. 102–486, §123(f)(5)(B), substituted ''subsection (*o*)(2)(B)(i)(II)'' for ''subsection (*l*)(2)(B)(i)(II)''.

Subsec. (n)(3)(B). Pub. L. 102–486, §123(f)(5)(C), inserted ''general service fluorescent lamps, incandescent reflector lamps,'' after ''fluorescent lamp ballasts,''.

Subsec. (*o*). Pub. L. 102–486, §123(f)(1), redesignated subsec. (*l*) as (*o*). Former subsec. (*o*) redesignated (r).

Subsec. (*o*)(1). Pub. L. 102–486, §123(f)(6)(A), inserted ''or, in the case of showerheads, faucets, water closets, or urinals, water use,'' after ''energy use,''.

Subsec. (*o*)(2)(A). Pub. L. 102–486, §123(f)(6)(B), inserted '', or, in the case of showerheads, faucets, water closets, or urinals, water efficiency,'' after ''energy efficiency''.

Subsec. (*o*)(2)(B)(i)(III). Pub. L. 102–486, §123(f)(6)(C), inserted '', or as applicable, water,'' after ''energy''.

Subsec. (*o*)(2)(B)(i)(VI). Pub. L. 102–486, §123(f)(6)(D), inserted ''and water'' after ''energy''.

Subsec. (*o*)(2)(B)(iii). Pub. L. 102–486, §123(f)(6)(E), substituted ''energy, and as applicable, water, savings'' for ''energy savings''.

Subsec. (*o*)(3)(B). Pub. L. 102–486, §123(f)(6)(F), inserted '', in the case of showerheads, faucets, water closets, or urinals, water, or'' after ''energy or''.

Subsec. (p). Pub. L. 102–486, §123(f)(1), redesignated subsec. (m) as (p). Former subsec. (p) redesignated (s).

Subsec. (p)(3)(A). Pub. L. 102–486, §123(f)(7), substituted ''subsection (*o*)(2)'' for ''subsection (*l*)(2)'' and ''subsection (*o*)(4)'' for ''subsection (*l*)(4)''.

Subsecs. (q) to (t). Pub. L. 102–486, §123(f)(1), redesignated subsecs. (n) to (q) as (q) to (t), respectively.

1988—Subsec. (e)(1)(C). Pub. L. 100–357, §2(e)(3), inserted ''Volume'' after ''Rated Storage''.

Subsec. (g). Pub. L. 100–357, §2(e)(1)(A), inserted ''; fluorescent lamp ballasts'' in heading.

Subsec. (g)(5) to (7). Pub. L. 100–357, §2(e)(1)(B), added pars. (5) to (7).

Subsec. (i)(1), (2). Pub. L. 100–357, §2(e)(2), substituted ''(14)'' for ''(13)''.

Subsec. (j)(B). Pub. L. 100–357, §2(e)(4)(A), inserted ''fluorescent lamp ballasts,'' after ''clothes dryers,'' and substituted ''heating'' for ''hearing''.

Subsec. (k)(1). Pub. L. 100–357, §2(e)(4)(B)(i), inserted ''and in paragraph (13)'' after ''(11)''.

Subsec. (k)(3)(B). Pub. L. 100–357, §2(e)(4)(B)(ii), inserted ''fluorescent lamp ballasts,'' after ''clothes dryers,''.

1987—Pub. L. 100–12 amended section generally, revising and restating as subsecs. (a) to (q) provisions formerly contained in subsecs. (a) to (j).

1978—Subsec. (a). Pub. L. 95–619 substituted provisions authorizing Secretary to prescribe an energy efficiency standard for each type of covered product specified in section 6292(a)(1) to (13) of this title, authorizing such prescription for any type of covered product specified in section 6292(a)(14) of this title where certain conditions are found to exist, and requiring publication of a list of those types of covered products considered subject to prescribed standards in the Federal Register not later than two years after Nov. 9, 1978, for provisions requiring the Administrator, meaning the Administrator of the Federal Energy Administration, to direct the National Bureau of Standards to develop an energy efficiency improvement target for each type of covered product listed in section 6292(a)(1) to (10) of this title, requiring prescription of such a target by the Administrator not later than ninety days after Aug. 14, 1976, requiring such targets be designed to exceed by 1980 by at least twenty percent the aggregate energy efficiency of the covered products as manufactured in 1972, requiring similar energy efficiency targets be prescribed for covered products specified in section 6292(a)(11) to (13) of this title not later than one year after Aug. 14, 1976, authorizing the Administrator to modify periodically any established targets, requiring the manufacturers of any covered products to submit reports as requested by the Administrator to help in establishing and reaching such targets, authorizing the Administrator to commence proceedings in certain situations to prescribe initial or revised targets, specifying when improvements of energy efficiency are economically justified, and authorizing the Attorney General to determine any negative effects on competition so as to make certain improvements economically unjustified.

Subsec. (b). Pub. L. 95–619 substituted provisions specifying preconditions for prescription of a standard for a type or class of covered products for provisions specifying the procedure to be followed in prescribing energy efficiency standards.

Subsec. (c). Pub. L. 95–619 substituted provisions requiring energy efficiency standards for each type of covered products be designed to achieve the maximum improvement in energy efficiency which the Secretary determines feasible and justified and requiring such standards be phased in over a period not to exceed five years for provisions relating to the prescription of test procedures and the requirements necessary to meet minimum energy efficiency levels.

Subsec. (d). Pub. L. 95–619 substituted provisions relating to a determination by the Secretary of the economic justification of any particular energy efficiency standard and a determination by the Attorney General of the impact on competition of any proposed standard for provisions relating to labeling rules.

Subsecs. (e) to (j). Pub. L. 95–619 added subsecs. (e) to (j).

1976—Subsec. (a)(1)(A). Pub. L. 94–385, §161(a), transferred authority to determine energy targets from the Administrator to the National Bureau of Standards and substituted 90 days after August 14, 1976, for 180 days after December 22, 1975, for the promulgation of rules by the Administrator.

Subsec. (a)(2). Pub. L. 94–385, §161(b), transferred authority to determine energy targets from the Administrator to the National Bureau of Standards and substituted one year after August 14, 1976, for one year after December 22, 1975, for the promulgation of rules by the Administrator.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6293, 6294, 6296, 6297, 6302, 6304, 6305, 6306, 6307, 6316, 6317 of this title.

§ 6296. Requirements of manufacturers

(a) In general

Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule. If such manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission. The preceding sentence shall not require that a catalog contain information respecting a covered product if the distribution of such catalog commenced before the effective date of the labeling rule under section 6294 of this title applicable to such product.

(b) Notification

(1) Each manufacturer of a covered product to which a rule under section 6294 of this title ap-

plies shall notify the Secretary or the Commission—

(A) not later than 60 days after the date such rule takes effect, of the models in current production (and starting serial numbers of those models) to which such rule applies; and

(B) prior to commencement of production, of all models subsequently produced (and starting serial numbers of those models) to which such rule applies.

(2) If requested by the Secretary or Commission, the manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide, within 30 days of the date of the request, the data from which the information included on the label and required by the rule was derived. Data shall be kept on file by the manufacturer for a period specified in the rule.

(3) When requested—

(A) by the Secretary for purposes of ascertaining whether a product subject to a standard established in or prescribed under section 6295 of this title is in compliance with that standard, or

(B) by the Commission for purposes of ascertaining whether the information set out on a label of a product, as required under section 6294 of this title, is accurate,

each manufacturer of such a product shall supply at his expense a reasonable number of such covered products to any laboratory designated by the Secretary or the Commission, as the case may be. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts.

(4) Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall annually, at a time specified by the Commission, supply to the Commission relevant data respecting energy consumption or water use developed in accordance with the test procedures applicable to such product under section 6293 of this title.

(5) A rule under section 6293, 6294, or 6295 of this title may require the manufacturer or his agent to permit a representative designated by the Commission or the Secretary to observe any testing required by this part and inspect the results of such testing.

(c) Deadline

Each manufacturer shall use labels reflecting the range data required to be disclosed under section 6294(c)(1)(B) of this title after the expiration of 60 days following the date of publication of any revised table of ranges unless the rule under section 6294 of this title provides for a later date. The Commission may not require labels be changed to reflect revised tables of ranges more often than annually.

(d) Information requirements

(1) For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product and the economic impact of any proposed energy conservation standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to insure compliance with the requirements of this part. In making any determination under this paragraph, the Secretary shall consider existing public sources of information, including nationally recognized certification programs of trade associations.

(2) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

(3) The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to energy information obtained under section 796 of title 15.

(Pub. L. 94–163, title III, § 326, Dec. 22, 1975, 89 Stat. 926; Pub. L. 95–619, title IV, § 425(d), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288; Pub. L. 100–12, §§ 6, 11(a)(2), (b)(3), Mar. 17, 1987, 101 Stat. 117, 125; Pub. L. 102–486, title I, § 123(g), Oct. 24, 1992, 106 Stat. 2829.)

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–486, § 123(g)(1), inserted ''or water use'' after ''consumption''.

Subsec. (d)(1). Pub. L. 102–486, § 123(g)(2), substituted '', energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use'' for ''or energy use''.

1987—Subsec. (a). Pub. L. 100–12, § 11(b)(3)(A), inserted heading.

Subsec. (b). Pub. L. 100–12, § 11(b)(3)(B), inserted heading.

Subsec. (b)(3)(A). Pub. L. 100–12, § 11(a)(2), inserted ''established in or'' before ''prescribed under''.

Subsec. (c). Pub. L. 100–12, § 11(b)(3)(C), inserted heading.

Subsec. (d). Pub. L. 100–12, § 6, inserted ''Information requirements'' as heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of carrying out this part, the Secretary may require, under authority otherwise available to him under this part or other provisions of law administered by him, each manufacturer of covered products to submit such information or reports of any kind or nature directly to the Secretary with respect to energy efficiency of such covered products, and with respect to the economic impact of any proposed energy efficiency standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy efficiency standards for such products and to insure compliance with the requirements of this part. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.''

1978—Subsec. (b)(1). Pub. L. 95–619, § 425(d)(2), inserted requirement that manufacturers of covered products give notice to the Secretary of models affected by rules promulgated under section 6294 of this title and expanded the notice requirement itself to include models manufactured more than sixty days after the date a particular rule takes effect.

Subsec. (b)(2). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

Subsec. (b)(3). Pub. L. 95–619, § 425(d)(3), authorized Secretary to request submission of covered products for

purposes of ascertaining whether a particular product complies with standards under section 6295 of this title and also authorized Secretary to designate testing laboratories for the submitted products.

Subsec. (b)(5). Pub. L. 95–619, §691(b)(2), substituted ''Secretary'' for ''Administrator''.

Subsec. (d). Pub. L. 95–619, §425(d)(1), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6302 to 6304, 6316 of this title.

§ 6297. Effect on other law

(a) Preemption of testing and labeling requirements

(1) Effective on March 17, 1987, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption or water use of any covered product if—

(A) such State regulation requires testing or the use of any measure of energy consumption, water use, or energy descriptor in any manner other than that provided under section 6293 of this title; or

(B) such State regulation requires disclosure of information with respect to the energy use, energy efficiency, or water use of any covered product other than information required under section 6294 of this title.

(2) For purposes of this section, the following definitions apply:

(A) The term ''State regulation'' means a law, regulation, or other requirement of a State or its political subdivisions. With respect to showerheads, faucets, water closets, and urinals, such term shall also mean a law, regulation, or other requirement of a river basin commission that has jurisdiction within a State.

(B) The term ''river basin commission'' means—

(i) a commission established by interstate compact to apportion, store, regulate, or otherwise manage or coordinate the management of the waters of a river basin; and

(ii) a commission established under section 1962b(a) of this title.

(b) General rule of preemption for energy conservation standards before Federal standard becomes effective for product

Effective on March 17, 1987, and ending on the effective date of an energy conservation standard established under section 6295 of this title for any covered product, no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision—

(1) was prescribed or enacted before January 8, 1987, and is applicable to products before January 3, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent lamp ballasts, was prescribed or enacted before June 28, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent or incandescent lamps, flow rate requirements for showerheads or faucets, or water use requirements for water closets or urinals, was prescribed or enacted before October 24, 1992;

(2) is a State procurement regulation described in subsection (e) of this section;

(3) is a regulation described in subsection (f)(1) of this section or is prescribed or enacted in a building code for new construction described in subsection (f)(2) of this section;

(4) is a regulation prohibiting the use in pool heaters of a constant burning pilot, or is a regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable, or is a regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those to which section 6295(i) of this title is applicable, or is a regulation (or portion thereof) regulating showerheads or faucets other than those to which section 6295(j) of this title is applicable or regulating lavatory faucets (other than metering faucets) for installation in public places, or is a regulation (or portion thereof) regulating water closets or urinals other than those to which section 6295(k) of this title is applicable;

(5) is a regulation described in subsection (d)(5)(B) of this section for which a waiver has been granted under subsection (d) of this section;

(6) is a regulation effective on or after January 1, 1992, concerning the energy efficiency or energy use of television sets; or

(7) is a regulation (or portion thereof) concerning the water efficiency or water use of low consumption flushometer valve water closets.

(c) General rule of preemption for energy conservation standards when Federal standard becomes effective for product

Except as provided in section 6295(b)(3)(A)(ii) of this title, subparagraphs (B) and (C) of section 6295(j)(3) of this title, and subparagraphs (B) and (C) of section 6295(k)(3) of this title and effective on the effective date of an energy conservation standard established in or prescribed under section 6295 of this title for any covered product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product unless the regulation—

(1) is a regulation described in paragraph (2) or (4) of subsection (b) of this section, except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts, except that a State regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those for which section 6295(i) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary and is applicable to such lamps;

(2) is a regulation which has been granted a waiver under subsection (d) of this section;

(3) is in a building code for new construction described in subsection (f)(3) of this section;

(4) is a regulation concerning the water use of lavatory faucets adopted by the State of New York or the State of Georgia before October 24, 1992;

(5) is a regulation concerning the water use of lavatory or kitchen faucets adopted by the State of Rhode Island prior to October 24, 1992; or

(6) is a regulation (or portion thereof) concerning the water efficiency or water use of gravity tank-type low consumption water closets for installation in public places, except that such a regulation shall be effective only until January 1, 1997.

(d) Waiver of Federal preemption

(1)(A) Any State or river basin commission with a State regulation which provides for any energy conservation standard or other requirement with respect to energy use, energy efficiency, or water use for any type (or class) of covered product for which there is a Federal energy conservation standard under section 6295 of this title may file a petition with the Secretary requesting a rule that such State regulation become effective with respect to such covered product.

(B) Subject to paragraphs (2) through (5), the Secretary shall, within the period described in paragraph (2) and after consideration of the petition and the comments of interested persons, prescribe such rule if the Secretary finds (and publishes such finding) that the State or river basin commission has established by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy or water interests.

(C) For purposes of this subsection, the term ''unusual and compelling State or local energy or water interests'' means interests which—

(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and

(ii) are such that the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.

The factors described in clause (ii) shall be evaluated within the context of the State's energy plan and forecast, and, with respect to a State regulation for which a petition has been submitted to the Secretary which provides for any energy conservation standard or requirement with respect to water use of a covered product, within the context of the water supply and groundwater management plan, water quality program, and comprehensive plan (if any) of the State or river basin commission for improving, developing, or conserving a waterway affected by water supply development.

(2) The Secretary shall give notice of any petition filed under paragraph (1)(A) and afford interested persons a reasonable opportunity to make written comments, including rebuttal comments, thereon. The Secretary shall, within the 6-month period beginning on the date on which any such petition is filed, deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of, and the reasons for, such denial.

(3) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that such State regulation will significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis. In determining whether to make such finding, the Secretary shall evaluate all relevant factors, including—

(A) the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

(i) in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(4) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that the State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(5) No final rule prescribed by the Secretary under this subsection may—

(A) permit any State regulation to become effective with respect to any covered product

manufactured within three years after such rule is published in the Federal Register or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation; or

(B) become effective with respect to a covered product manufactured before the earliest possible effective date specified in section 6295 of this title for the initial amendment of the energy conservation standard established in such section for the covered product; except that such rule may become effective before such date if the Secretary finds (and publishes such finding) that, in addition to the other requirements of this subsection the State has established, by a preponderance of the evidence, that—

(i) there exists within the State an energy emergency condition or, if the State regulation provides for an energy conservation standard or other requirement with respect to the water use of a covered product for which there is a Federal energy conservation standard under subsection (j) or (k) of section 6295 of this title, a water emergency condition, which—

(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy or, in the case of a water emergency condition, water or wastewater treatment, to its residents at less than prohibitive costs; and

(II) cannot be substantially alleviated by the importation of energy or, in the case of a water emergency condition, by the importation of water, or by the use of interconnection agreements; and

(ii) the State regulation is necessary to alleviate substantially such condition.

(6) In any case in which a State is issued a rule under paragraph (1) with respect to a covered product and subsequently a Federal energy conservation standard concerning such product is amended pursuant to section 6295 of this title, any person subject to such State regulation may file a petition with the Secretary requesting the Secretary to withdraw the rule issued under paragraph (1) with respect to such product in such State. The Secretary shall consider such petition in accordance with the requirements of paragraphs (1), (3), and (4), except that the burden shall be on the petitioner to show by a preponderance of the evidence that the rule received by the State under paragraph (1) should be withdrawn as a result of the amendment to the Federal standard. If the Secretary determines that the petitioner has shown that the rule issued by the State should be so withdrawn, the Secretary shall withdraw it.

(e) Exception for certain State procurement standards

Any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.

(f) Exception for certain building code requirements

(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 6295 of this title for such covered product.

(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 6295 of this title for such covered product if the code does not require that the energy efficiency of such covered product exceed—

(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsection (b)(1) or (b)(5) of this section,

whichever is higher.

(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under section 6295 of this title, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under section 6295 of this title, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section.

(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under section 6295 of this title or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use or equivalent cost basis.

(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 6295 of this title, the baseline building

designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section.

(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

(F) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

(G) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 6293 of this title, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 6293 of this title or other technically accurate documented procedure.

(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under section 6295 of this title and the applicable standard of such State, if any, that has been granted a waiver under subsection (d) of this section, such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d) of this section.

(g) No warranty

Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.

(Pub. L. 94–163, title III, §327, Dec. 22, 1975, 89 Stat. 926; Pub. L. 95–619, title IV, §424, Nov. 9, 1978, 92 Stat. 3263; Pub. L. 100–12, §7, Mar. 17, 1987, 101 Stat. 117; Pub. L. 100–357, §2(f), June 28, 1988, 102 Stat. 674; Pub. L. 102–486, title I, §123(h), Oct. 24, 1992, 106 Stat. 2829.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–486, §123(h)(1)(A)–(C), in introductory provisions inserted ''or water use'' after ''energy consumption'', in par. (A) inserted '', water use,'' after ''energy consumption'', and in par. (B) substituted '', energy efficiency, or water use'' for ''or energy efficiency''.

Subsec. (a)(2). Pub. L. 102–486, §123(h)(1)(D), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this section, the term 'State regulation' means a law, regulation, or other requirement of a State or its political subdivisions.''

Subsec. (b). Pub. L. 102–486, §123(h)(2)(A), substituted '', energy use, or water use of the covered product'' for ''or energy use of the covered product''.

Subsec. (b)(1). Pub. L. 102–486, §123(h)(2)(B), inserted before semicolon at end '', or in the case of any portion of any regulation which establishes requirements for fluorescent or incandescent lamps, flow rate requirements for showerheads or faucets, or water use requirements for water closets or urinals, was prescribed or enacted before October 24, 1992''.

Subsec. (b)(4). Pub. L. 102–486, §123(h)(2)(C), inserted before semicolon at end '', or is a regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those to which section 6295(i) of this title is applicable, or is a regulation (or portion thereof) regulating showerheads or faucets other than those to which section 6295(j) of this title is applicable or regulating lavatory faucets (other than metering faucets) for installation in public places, or is a regulation (or portion thereof) regulating water closets or urinals other than those to which section 6295(k) of this title is applicable''.

Subsec. (b)(7). Pub. L. 102–486, §123(h)(2)(D)–(F), added par. (7).

Subsec. (c). Pub. L. 102–486, §123(h)(3)(A), inserted '', subparagraphs (B) and (C) of section 6295(j)(3) of this title, and subparagraphs (B) and (C) of section 6295(k)(3) of this title'' after ''section 6295(b)(3)(A)(ii) of this title'' and substituted '', energy use, or water use'' for ''or energy use'' of this title.

Subsec. (c)(1). Pub. L. 102–486, §123(h)(3)(B) inserted before semicolon at end '', except that a State regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those for which section 6295(i) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary and is applicable to such lamps''.

Subsec. (c)(4) to (6). Pub. L. 102–486, §123(h)(3)(C)–(E), added pars. (4) to (6).

Subsec. (d)(1)(A). Pub. L. 102–486, §123(h)(4)(A), inserted ''or river basin commission'' after ''Any State'' and substituted '', energy efficiency, or water use'' for ''or energy efficiency''.

Subsec. (d)(1)(B). Pub. L. 102–486, §123(h)(4)(B), substituted ''State or river basin commission has'' for ''State has'' and inserted ''or water'' after ''energy''.

Subsec. (d)(1)(C). Pub. L. 102–486, §123(h)(4)(C), in introductory provisions and cl. (ii) inserted ''or water'' after ''energy'' wherever appearing and in closing provisions inserted before period at end '', and, with respect to a State regulation for which a petition has been submitted to the Secretary which provides for any energy conservation standard or requirement with respect to water use of a covered product, within the context of the water supply and groundwater management plan, water quality program, and comprehensive plan (if any) of the State or river basin commission for improving, developing, or conserving a waterway affected by water supply development''.

Subsec. (d)(5)(B)(i). Pub. L. 102–486, §123(h)(5), added cl. (i) and struck out former cl. (i) which read as follows: ''an energy emergency condition exists within the State which—

''(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and

''(II) cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and''.

1988—Subsec. (b)(1). Pub. L. 100–357, §2(f)(1), inserted before semicolon '', or in the case of any portion of any regulation which establishes requirements for fluorescent lamp ballasts, was prescribed or enacted before June 28, 1988''.

Subsec. (b)(4). Pub. L. 100–357, §2(f)(2), inserted before semicolon '', or is a regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable''.

Subsec. (c)(1). Pub. L. 100–357, §2(f)(3), inserted before semicolon '', except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts''.

1987—Pub. L. 100–12 amended section generally, revising and restating as subsecs. (a) to (g) provisions formerly contained in subsecs. (a) to (e).

1978—Subsec. (a)(2). Pub. L. 95–619, §424(b), substituted ''other requirement'' for ''similar requirement''.

Subsec. (b). Pub. L. 95–619, §424(a), in par. (1) substituted provisions vesting power to prescribe rules superseding State energy efficiency regulations in the Secretary for provisions vesting such power in the Administrator of the Federal Energy Administration and provided that persons subject to such State regulations were to petition the Secretary for relief therefrom rather than the Administrator, in par. (2) inserted provisions authorizing the supersedure of any State regulation prescribed after Jan. 1, 1978 respecting energy use of any type of covered product and authorizing the filing of a petition by the State for exemption from any such supersedure, and struck out provision that a State regulation containing a more stringent energy efficiency standard than the corresponding Federal standard would not be superseded, and added pars. (3) to (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6293, 6295, 6306, 6316 of this title.

§ 6298. Rules

The Commission and the Secretary may each issue such rules as each deems necessary to carry out the provisions of this part.

(Pub. L. 94–163, title III, §328, Dec. 22, 1975, 89 Stat. 928; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6306, 6316 of this title.

§ 6299. Authority to obtain information

(a) In general

For purposes of carrying out this part, the Commission and the Secretary may each sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and may each administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpena served, upon any persons subject to this part, the Commission and the Secretary may each seek an order from the district court of the United States for any district in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey any such order is punishable by such court as a contempt thereof.

(b) Confidentiality

Any information submitted by any person to the Secretary or the Commission under this part shall not be considered energy information as defined by section 796(e)(1) of title 15 for purposes of any verification examination authorized to be conducted by the Comptroller General under section 6381 of this title.

(Pub. L. 94–163, title III, §329, Dec. 22, 1975, 89 Stat. 928; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100–12, §11(b)(4), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Pub. L. 100–12 inserted headings for subsecs. (a) and (b).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6300. Exports

This part shall not apply to any covered product if (1) such covered product is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such product is in fact distributed in commerce for use in the United States, and (2) such covered product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered product is intended for export.

(Pub. L. 94–163, title III, §330, Dec. 22, 1975, 89 Stat. 928.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6301. Imports

Any covered product offered for importation in violation of section 6302 of this title shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to him appropriate to ensure that such covered product will not violate section 6302 of this title, or will be exported or abandoned to the United States.

The Secretary of the Treasury shall prescribe rules under this section not later than 180 days after December 22, 1975.

(Pub. L. 94–163, title III, § 331, Dec. 22, 1975, 89 Stat. 928.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6302. Prohibited acts

(a) In general

It shall be unlawful—

(1) for any manufacturer or private labeler to distribute in commerce any new covered product to which a rule under section 6294 of this title applies, unless such covered product is labeled in accordance with such rule;

(2) for any manufacturer, distributor, retailer, or private labeler to remove from any new covered product or render illegible any label required to be provided with such product under a rule under section 6294 of this title;

(3) for any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under this part;

(4) for any person to fail to comply with an applicable requirement of section 6296(a), (b)(2), (b)(3), or (b)(5) of this title; or

(5) for any manufacturer or private labeler to distribute in commerce any new covered product which is not in conformity with an applicable energy conservation standard established in or prescribed under this part.

(b) "New covered product" defined

For purposes of this section, the term ''new covered product'' means a covered product the title of which has not passed to a purchaser who buys such product for purposes other than (1) reselling such product, or (2) leasing such product for a period in excess of one year.

(Pub. L. 94–163, title III, § 332, Dec. 22, 1975, 89 Stat. 928; Pub. L. 100–12, § 11(a)(3), (b)(5), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–12, § 11(b)(5)(A), inserted heading.

Subsec. (a)(5). Pub. L. 100–12, § 11(a)(3), substituted ''energy conservation standard established in or prescribed under'' for ''energy efficiency standard prescribed under''.

Subsec. (b). Pub. L. 100–12, § 11(b)(5)(B), inserted heading.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6295, 6301, 6303, 6304, 6316, 6317 of this title.

§ 6303. Enforcement

(a) In general

Except as provided in subsection (c) of this section, any person who knowingly violates any provision of section 6302 of this title shall be subject to a civil penalty of not more than $100 for each violation. Such penalties shall be assessed by the Commission, except that penalties for violations of section 6302(a)(3) of this title which relate to requirements prescribed by the Secretary, violations of section 6302(a)(4) of this title which relate to requests of the Secretary under section 6296(b)(2) of this title, or violations of section 6302(a)(5) of this title shall be assessed by the Secretary. Civil penalties assessed under this part may be compromised by the agency or officer authorized to assess the penalty, taking into account the nature and degree of the violation and the impact of the penalty upon a particular respondent. Each violation of paragraph (1), (2), or (5) of section 6302(a) of this title shall constitute a separate violation with respect to each covered product, and each day of violation of section 6302(a)(3) or (4) of this title shall constitute a separate violation.

(b) "Knowingly" defined

As used in subsection (a) of this section, the term ''knowingly'' means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

(c) Special rule

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of title 15) for any person to violate section 6293(c) of this title, except to the extent that such violation is prohibited under the provisions of section 6302(a)(1) of this title, in which case such provisions shall apply.

(d) Procedure for assessing penalty

(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph

have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28 or section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(6) For purposes of applying the preceding provisions of this subsection in the case of the assessment of a penalty by the Commission for a violation of paragraphs (1) and (2) of section 6302 of this title, references in such provisions to ''Secretary'' and ''Department of Energy'' shall be considered to be references to the ''Commission''.

(Pub. L. 94–163, title III, §333, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95–619, title IV, §§423, 425(e), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3262, 3266, 3288; Pub. L. 100–12, §11(b)(6), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Pub. L. 100–12 inserted headings for subsecs. (a) to (d).

1978—Subsec. (a). Pub. L. 95–619, §§425(e)(1), 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing, and ''subsection (c) of this section'' for ''subsection (b) of this section''.

Subsec. (c). Pub. L. 95–619, §425(e)(2), substituted ''section 6293(c) of this title'' for ''section 6293(d)(2) of this title'' and inserted provision making an exception from the unfair or deceptive act or practice rule.

Subsec. (d). Pub. L. 95–619, §423, added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6316, 6317 of this title.

§ 6304. Injunctive enforcement

The United States district courts shall have jurisdiction to restrain (1) any violation of section 6302 of this title and (2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 6294 or 6295 of this title. Any such action shall be brought by the Commission, except that any such action to restrain any violation of section 6302(a)(3) of this title which relates to requirements prescribed by the Secretary, any violation of section 6302(a)(4) of this title which relates to requests of the Secretary under section 6296(b)(2) of this title, or any violation of section 6302(a)(5) of this title shall be brought by the Secretary. Any such action may be brought in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

(Pub. L. 94–163, title III, §334, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6305. Citizen suits

(a) Civil actions; jurisdiction

Except as otherwise provided in subsection (b) of this section, any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part;

(2) any Federal agency which has a responsibility under this part where there is an alleged failure of such agency to perform any act or duty under this part which is not discretionary; or

(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 6295 of this title.

The United States district courts shall have jurisdiction, without regard to the amount in con-

troversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be. The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered product.

(b) Limitation

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the date on which the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the Commission, and (iii) to any alleged violator of such provision or rule, or

(B) if the Commission has commenced and is diligently prosecuting a civil action to require compliance with such provision or rule, but, in any such action, any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the date on which the plaintiff has given notice of such action to the Secretary and Commission.

Notice under this subsection shall be given in such manner as the Commission shall prescribe by rule.

(c) Right to intervene

In such action under this section, the Secretary or the Commission (or both), if not a party, may intervene as a matter of right.

(d) Award of costs of litigation

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Preservation of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this part or any rule thereunder, or to seek any other relief (including relief against the Secretary or the Commission).

(f) Compliance in good faith

For purposes of this section, if a manufacturer or private labeler complied in good faith with a rule under this part, then he shall not be deemed to have violated any provision of this part by reason of the alleged invalidity of such rule.

(Pub. L. 94–163, title III, § 335, Dec. 22, 1975, 89 Stat. 930; Pub. L. 95–619, title IV, § 425(f), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub. L. 100–12, §§ 8, 11(b)(7), Mar. 17, 1987, 101 Stat. 122, 126.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–12, § 8, added par. (3) and inserted at end ''The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered product.''

Subsecs. (b) to (f). Pub. L. 100–12, § 11(b)(7), inserted headings for subsecs. (b) to (f).

1978—Subsec. (a). Pub. L. 95–619, § 425(f), struck out provision in par. (1) which excluded sections 6295 and 6302(a)(5) of this title and rules thereunder, struck out provision in par. (2) which excluded any act or duty under section 6295 or 6302(a)(5) of this title, and inserted provision giving district courts jurisdiction to order Federal agencies to perform particular acts or duties under this part.

Subsecs. (b), (c), (e). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6306. Administrative procedure and judicial review

(a) Procedure for prescription of rules

(1) In addition to the requirements of section 553 of title 5, rules prescribed under section 6293, 6294, 6295, 6297, or 6298 of this title shall afford interested persons an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) In the case of a rule prescribed under section 6295 of this title, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

(A) other interested persons who have made oral presentations; and

(B) employees of the United States who have made written or oral presentations with respect to disputed issues of material fact.

Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

(3) A transcript shall be kept of any oral presentations made under this subsection.

(b) Petition by persons adversely affected by rules; effect on other laws

(1) Any person who will be adversely affected by a rule prescribed under section 6293, 6294, or 6295 of this title may, at any time within 60 days after the date on which such rule is prescribed, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be transmitted by the clerk of the court to the agency which prescribed the rule. Such agency shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based, as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule under section

6293, 6294, or 6295 of this title may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

(5) The procedures applicable under this part shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein); or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms by referring to this part and declaring that such provision supersedes, in whole or in part, the procedures of this part.

(c) Jurisdiction

Jurisdiction is vested in the Federal district courts of the United States over actions brought by—

(1) any adversely affected person to determine whether a State or local government is complying with the requirements of this part; and

(2) any person who files a petition under section 6295(k)[1] of this title which is denied by the Secretary.

(Pub. L. 94–163, title III, §336, Dec. 22, 1975, 89 Stat. 930; Pub. L. 95–619, title IV, §§425(g), 427, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3267, 3288; Pub. L. 100–12, §9, Mar. 17, 1987, 101 Stat. 123.)

REFERENCES IN TEXT

Section 6295(k) of this title, referred to in subsec. (c)(2), was redesignated section 6295(n) of this title by Pub. L. 102–486, title I, §123(f)(1), Oct. 24, 1992, 106 Stat. 2824.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–12 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Rules under sections 6293, 6294, 6295(a), 6297(b), or 6298 of this title shall be prescribed in accordance with section 553 of title 5, except that—

''(1) interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule, and

''(2) in the case of a rule under section 6295(a) of this title, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

''(A) other interested persons who have made oral presentations under paragraph (1), and

''(B) employees of the United States who have made written or oral presentations,

with respect to disputed issues of material fact. Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

A transcript shall be kept of any oral presentations made under this subsection.''

Subsec. (b). Pub. L. 100–12 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) Any person who will be adversely affected by a rule prescribed under section 6293, 6294, or 6295 of this title when it is effective may, at any time prior to the sixtieth day after the date such rule is prescribed, file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the agency which prescribed the rule. Such agency thereupon shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based as provided in section 2112 of title 28.

''(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule under section 6293, 6294, or 6295 of this title may be affirmed unless supported by substantial evidence.

''(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

''(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.''

Subsec. (c). Pub. L. 100–12 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) Titles IV and V of the Department of Energy Organization Act shall not apply with respect to the procedures under this part.

''(2) The procedures applicable under this part shall not—

''(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein), or

''(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this part, and declaring that such provision supersedes, in whole or in part, the procedures of this part.''

1978—Subsec. (a). Pub. L. 95–619, §§425(g)(1)–(3), 691(b)(2), struck out par. designation ''(1)'' before ''Rules'' and substituted reference to section ''6295(a)'' for ''6295(a)(1), (2), or (3)'' in first sentence; redesignated subpars. (A) and (B) and cls. (i) and (ii) of subpar. (B) as pars. (1) and (2) and subpars. (A) and (B) of par. (2), respectively; struck out ''paragraph (1), (2), or (3) of'' before ''section 6295(a)'' in par. (2) as so redesignated; directed the substitution of ''paragraph (1)'' for ''subparagraph (A)'' in par. (2)(B) as so redesignated, which was executed to par. (2)(A) as so redesignated to reflect the probable intent of Congress; substituted ''subsection'' for ''paragraph'' in last sentence; and substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Par. (2), which provided that subsecs. (c) and (d) of section 57a of title 15 shall apply to rules under section 6295 of this title (other than subsecs. (a)(1), (2), and (3)) to the same extent that such subsecs. apply to rules under section 57a(a)(1)(B) of title 15, was struck out to reflect the probable intent of Congress in view of the amendment by Pub. L. 95–619, §425(g)(1), which struck out designation ''(1)'' after subsection (a) designation, and in view of the amendment by Pub. L. 95–619, §422, to section 6295(a) of this title, which struck out pars. (3) to (5) therefrom.

Subsec. (b). Pub. L. 95–619, §425(g)(4), (5), substituted ''section 6293, 6294, or 6295'' for ''section 6293 or 6294'' in pars. (1) and (2) and struck out former par. (5) which related to the application of section 57a(e) of title 15 to rules under section 6295 of this title.

Subsec. (c). Pub. L. 95–619, §427, added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6295, 6316 of this title.

[1] See References in Text note below.

§ 6307. Consumer education

(a) In general

The Secretary shall, in close cooperation and coordination with the Commission and appropriate industry trade associations and industry members, including retailers, and interested consumer and environmental organizations, carry out a program to educate consumers and other persons with respect to—

(1) the significance of estimated annual operating costs;

(2) the way in which comparative shopping, including comparisons of estimated annual operating costs, can save energy for the Nation and money for consumers; and

(3) such other matters as the Secretary determines may encourage the conservation of energy in the use of consumer products.

Such steps to educate consumers may include publications, audiovisual presentations, demonstrations, and the sponsorship of national and regional conferences involving manufacturers, distributors, retailers, and consumers, and State, local, and Federal Government representatives. Nothing in this section may be construed to require the compilation of lists which compare the estimated annual operating costs of consumer products by model or manufacturer's name.

(b) State and local incentive programs

(1) The Secretary shall, not later than one year after October 24, 1992, issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the standards established for such products pursuant to subsections (j) and (k) of section 6295 of this title.

(2) In developing such recommendations, the Secretary shall consult with the heads of other federal[1] agencies, including the Administrator of the Environmental Protection Agency; State officials; manufacturers, suppliers, and installers of plumbing products; and other interested parties.

(Pub. L. 94–163, title III, § 337, Dec. 22, 1975, 89 Stat. 931; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102–486, title I, § 123(i), Oct. 24, 1992, 106 Stat. 2831.)

AMENDMENTS

1992—Pub. L. 102–486 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6308. Annual report

The Secretary shall report to the Congress and the President either (1) as part of his annual report, or (2) in a separate report submitted annually, on the progress of the program undertaken pursuant to this part and on the energy savings impact of this part. Each such report shall specify the actions undertaken by the Secretary in carrying out this part during the period covered by such report, and those actions which the Secretary was required to take under this part during such period but which were not taken, together with the reasons therefor. Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part.

(Pub. L. 94–163, title III, § 338, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95–619, title IV, § 425(h), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub. L. 100–12, § 10, Mar. 17, 1987, 101 Stat. 124.)

AMENDMENTS

1987—Pub. L. 100–12 inserted at end ''Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part.''

1978—Pub. L. 95–619 inserted requirement that each report under this section should account for actions taken by the Secretary, as well as actions not taken, during the covered period in carrying out this part and substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6294 of this title.

§ 6309. Authorization of appropriations

(a) Authorizations for Secretary

There are authorized to be appropriated to the Secretary not more than the following amounts to carry out his responsibilities under this part—

(1) $1,700,000 for fiscal year 1976;

(2) $1,500,000 for fiscal year 1977;

(3) $3,300,000 for fiscal year 1978; and

(4) $10,000,000 for fiscal year 1979.

Amounts authorized for such purposes under paragraph (3) shall be in addition to amounts otherwise authorized and appropriated for such purposes.

(b) Authorizations for Commission

There are authorized to be appropriated to the Commission not more than the following amounts to carry out its responsibilities under this part—

(1) $650,000 for fiscal year 1976;

(2) $700,000 for fiscal year 1977;

(3) $700,000 for fiscal year 1978; and

(3)[1] $2,000,000 for fiscal year 1979.

(c) Other authorizations

There are authorized to be appropriated to the Secretary to be allocated not more than the following amounts—

(1) $1,100,000 for fiscal year 1976;

(2) $2,500,000 for fiscal year 1977; and

(3) $1,800,000 for fiscal year 1978.

Such amounts shall, and any amounts authorized to be appropriated under subsection (a) of this section, may be allocated by the Secretary to the National Institute of Standards and Technology.

(Pub. L. 94–163, title III, § 339, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95–70, § 3, July 21, 1977, 91 Stat. 276; Pub. L. 95–619, title IV, § 426, title VI,

[1] So in original. Probably should be capitalized.

[1] So in original. Probably should be designated ''(4)''.

§ 691(b)(2), Nov. 9, 1978, 92 Stat. 3267, 3288; Pub. L. 100–12, § 11(b)(8), Mar. 17, 1987, 101 Stat. 126; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards'' in closing provisions.

1987—Pub. L. 100–12 inserted headings for subsecs. (a) to (c).

1978—Subsec. (a). Pub. L. 95–619, §§ 426(a), 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, in text preceding par. (1), ''$3,300,000'' for ''$1,500,000'' in par. (3), added par. (4), and provided that amounts authorized under par. (3) would be in addition to amounts otherwise authorized and appropriated.

Subsec. (b)(3). Pub. L. 95–619, § 426(b), added second par. (3) relating to fiscal year 1979.

Subsec. (c). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator''.

1977—Subsec. (c)(2). Pub. L. 95–70, § 3(a), substituted ''$2,500,000'' for ''$700,000''.

Subsec. (c)(3). Pub. L. 95–70, § 3(b), substituted ''$1,800,000'' for ''$700,000''.

PART A–1—CERTAIN INDUSTRIAL EQUIPMENT

CODIFICATION

This part was, in the original, designated part C and has been changed to part A–1 for purposes of codification.

§ 6311. Definitions

For purposes of this part—

(1) The term ''covered equipment'' means one of the following types of industrial equipment:

(A) Electric motors and pumps.

(B) Small commercial package air conditioning and heating equipment.

(C) Large commercial package air conditioning and heating equipment.

(D) Packaged terminal air-conditioners and packaged terminal heat pumps.

(E) Warm air furnaces and packaged boilers.

(F) Storage water heaters, instantaneous water heaters, and unfired hot water storage tanks.

(G) Any other type of industrial equipment which the Secretary classifies as covered equipment under section 6312(b) of this title.

(2)(A) The term ''industrial equipment'' means any article of equipment referred to in subparagraph (B) of a type—

(i) which in operation consumes, or is designed to consume, energy;

(ii) which, to any significant extent, is distributed in commerce for industrial or commercial use; and

(iii) which is not a ''covered product'' as defined in section 6291(a)(2) of this title, other than a component of a covered product with respect to which there is in effect a determination under section 6312(c) of this title;

without regard to whether such article is in fact distributed in commerce for industrial or commercial use.

(B) The types of equipment referred to in this subparagraph (in addition to electric motors and pumps, small and large commercial package air conditioning and heating equipment, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks) are as follows:

(i) compressors;
(ii) fans;
(iii) blowers;
(iv) refrigeration equipment;
(v) electric lights;
(vi) electrolytic equipment;
(vii) electric arc equipment;
(viii) steam boilers;
(ix) ovens;
(x) kilns;
(xi) evaporators; and
(xii) dryers.

(3) The term ''energy efficiency'' means the ratio of the useful output of services from an article of industrial equipment to the energy use by such article, determined in accordance with test procedures under section 6314 of this title.

(4) The term ''energy use'' means the quantity of energy directly consumed by an article of industrial equipment at the point of use, determined in accordance with test procedures established under section 6314 of this title.

(5) The term ''manufacturer'' means any person who manufactures industrial equipment.

(6) The term ''label'' may include any printed matter determined appropriate by the Secretary.

(7) The terms ''energy'', ''manufacture'', ''import'', ''importation'', ''consumer product'', ''distribute in commerce'', ''distribution in commerce'', and ''commerce'' have the same meaning as is given such terms in section 6291 of this title.

(8) The term ''small commercial package air conditioning and heating equipment'' means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity).

(9) The term ''large commercial package air conditioning and heating equipment'' means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity).

(10)(A) The term ''packaged terminal air conditioner'' means a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.

(B) The term ''packaged terminal heat pump'' means a packaged terminal air conditioner that utilizes reverse cycle refrigeration

as its prime heat source and should have supplementary heat source available to builders with the choice of hot water, steam, or electric resistant heat.

(11)(A) The term ''warm air furnace'' means a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces.

(B) The term ''packaged boiler'' means a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.

(12)(A) The term ''storage water heater'' means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand. Such term does not include units with an input rating of 4000 Btu per hour or more per gallon of stored water.

(B) The term ''instantaneous water heater'' means a water heater that has an input rating of at least 4000 Btu per hour per gallon of stored water.

(C) The term ''unfired hot water storage tank'' means a tank used to store water that is heated externally.

(13)(A) The term ''electric motor'' means any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987.

(B) The term ''definite purpose motor'' means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application and which cannot be used in most general purpose applications.

(C) The term ''special purpose motor'' means any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.

(D) The term ''open motor'' means a motor having ventilating openings which permit passage of external cooling air over and around the windings of the machine.

(E) The term ''enclosed motor'' means a motor so enclosed as to prevent the free exchange of air between the inside and outside of the case but not sufficiently enclosed to be termed airtight.

(F) The term ''small electric motor'' means a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.

(G) The term ''efficiency'' when used with respect to an electric motor means the ratio of an electric motor's useful power output to its total power input, expressed in percentage.

(H) The term ''nominal full load efficiency'' means the average efficiency of a population of motors of duplicate design as determined in accordance with NEMA Standards Publication MG1–1987.

(14) The term ''ASHRAE'' means the American Society of Heating, Refrigerating, and Air Conditioning Engineers.

(15) The term ''IES'' means the Illuminating Engineering Society of North America.

(16) The term ''NEMA'' means the National Electrical Manufacturers Association.

(17) The term ''IEEE'' means the Institute of Electrical and Electronics Engineers.

(18) The term ''energy conservation standard'' means—

(A) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or

(B) a design requirement for a product.

(Pub. L. 94–163, title III, § 340, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267; amended Pub. L. 102–486, title I, § 122(a), (f)(1), Oct. 24, 1992, 106 Stat. 2806, 2817.)

AMENDMENTS

1992—Par. (1)(B) to (G). Pub. L. 102–486, § 122(a)(1), added subpars. (B) to (F) and redesignated former subpar. (B) as (G).

Par. (2)(B). Pub. L. 102–486, § 122(a)(2), in introductory provisions, substituted ''pumps, small and large commercial package air conditioning and heating equipment, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks)'' for ''pumps)'', redesignated cls. (vi) to (x) and (xii) to (xiv) as cls. (v) to (ix) and (x) to (xii), respectively, and struck out former cls. (v) and (xi) which read ''air conditioning equipment;'' and ''furnaces;'', respectively.

Par. (3). Pub. L. 102–486, § 122(f)(1), substituted ''(3) The'' for ''(3) the''.

Pars. (8) to (18). Pub. L. 102–486, § 122(a)(3), added pars. (8) to (18).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6312, 6316, 6317 of this title.

§ 6312. Purposes and coverage

(a) Congressional statement of purpose

It is the purpose of this part to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation.

(b) Inclusion of industrial equipment as covered equipment

The Secretary may, by rule, include a type of industrial equipment as covered equipment if he determines that to do so is necessary to carry out the purposes of this part.

(c) Inclusion of component parts of consumer products as industrial equipment

The Secretary may, by rule, include as industrial equipment articles which are component parts of consumer products, if he determines that—

(1) such articles are, to a significant extent, distributed in commerce other than as component parts for consumer products; and

(2) such articles meet the requirements of section 6311(2)(A) of this title (other than clauses (ii) and (iii)).

(Pub. L. 94–163, title III, § 341, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3268.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6311 of this title.

§ 6313. Standards

(a) Small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks

(1) Each small commercial package air conditioning and heating equipment manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum seasonal energy efficiency ratio of air-cooled three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 10.0.

(B) The minimum seasonal energy efficiency ratio of air-cooled three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 9.7.

(C) The minimum energy efficiency ratio of air-cooled central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 8.9 (at a standard rating of 95 degrees F db).

(D) The minimum heating seasonal performance factor of air-cooled three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 6.8.

(E) The minimum heating seasonal performance factor of air-cooled three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 6.6.

(F) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.0 (at a high temperature rating of 47 degrees F db).

(G) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity) shall be 9.3 (at a standard rating of 95 degrees F db, outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water-source and water-cooled equipment).

(H) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 10.5 (at a standard rating of 95 degrees F db, outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water source and water-cooled equipment).

(I) The minimum coefficient of performance in the heating mode of water-source heat pumps less than 135,000 Btu per hour (cooling capacity) shall be 3.8 (at a standard rating of 70 degrees Fahrenheit entering water).

(2) Each large commercial package air conditioning and heating equipment manufactured on or after January 1, 1995, shall meet the following standard levels:

(A) The minimum energy efficiency ratio of air-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 8.5 (at a standard rating of 95 degrees F db).

(B) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 2.9.

(C) The minimum energy efficiency ratio of water- and evaporatively-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 9.6 (according to ARI Standard 360–86).

(3) Each packaged terminal air conditioner and packaged terminal heat pump manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum energy efficiency ratio (EER) of packaged terminal air conditioners and packaged terminal heat pumps in the cooling mode shall be 10.0 — (0.16 x Capacity [in thousands of Btu per hour at a standard rating of 95 degrees F db, outdoor temperature]). If a unit has a capacity of less than 7,000 Btu per hour, then 7,000 Btu per hour shall be used in the calculation. If a unit has a capacity of greater than 15,000 Btu per hour, then 15,000 Btu per hour shall be used in the calculation.

(B) The minimum coefficient of performance (COP) of packaged terminal heat pumps in the heating mode shall be 1.3 + (0.16 x the minimum cooling EER as specified in subparagraph (A)) (at a standard rating of 47 degrees F db).

(4) Each warm air furnace and packaged boiler manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum thermal efficiency at the maximum rated capacity of gas-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 80 percent.

(B) The minimum thermal efficiency at the maximum rated capacity of oil-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 81 percent.

(C) The minimum combustion efficiency at the maximum rated capacity of gas-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 80 percent.

(D) The minimum combustion efficiency at the maximum rated capacity of oil-fired pack-

aged boilers with capacity of 300,000 Btu per hour or more shall be 83 percent.

(5) Each storage water heater, instantaneous water heater, and unfired water storage tank manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of electric storage water heaters shall be 0.30 + (27/Measured Storage Volume [in gallons]).

(B) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of 155,000 Btu per hour or less shall be 1.30 + (114/Measured Storage Volume [in gallons]). The minimum thermal efficiency of such units shall be 78 percent.

(C) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of more than 155,000 Btu per hour shall be 1.30 + (95/Measured Storage Volume [in gallons]). The minimum thermal efficiency of such units shall be 78 percent.

(D) The minimum thermal efficiency of instantaneous water heaters with a storage volume of less than 10 gallons shall be 80 percent.

(E) Except as provided in subparagraph (G), the minimum thermal efficiency of instantaneous water heaters with a storage volume of 10 gallons or more shall be 77 percent. The maximum standby loss, in percent/hour, of such units shall be 2.30 + (67/Measured Storage Volume [in gallons]).

(F) Except as provided in subparagraph (G), the maximum heat loss of unfired hot water storage tanks shall be 6.5 Btu per hour per square foot of tank surface area.

(G) Storage water heaters and hot water storage tanks having more than 140 gallons of storage capacity need not meet the standby loss or heat loss requirements specified in subparagraphs (A) through (C) and subparagraphs (E) and (F) if the tank surface area is thermally insulated to R–12.5 and if a standing pilot light is not used.

(6)(A) If ASHRAE/IES Standard 90.1, as in effect on October 24, 1992, is amended with respect to any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, the Secretary shall establish an amended uniform national standard for that product at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the Federal Register and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than such amended ASHRAE/IES Standard 90.1 for such product would result in significant additional conservation of energy and is technologically feasible and economically justified.

(B)(i) If the Secretary issues a rule containing such a determination, the rule shall establish such amended standard. In determining whether a standard is economically justified for the purposes of subparagraph (A), the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy conservation; and

(VII) other factors the Secretary considers relevant.

(ii) The Secretary may not prescribe any amended standard under this paragraph which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. The Secretary may not prescribe an amended standard under this subparagraph if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types or classes.

(C) A standard amended by the Secretary under this paragraph shall become effective for products manufactured—

(i) with respect to small commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, on or after a date which is two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard referred to in subparagraph (A); and

(ii) with respect to large commercial package air conditioning and heating equipment, on or after a date which is three years after the effective date of the applicable minimum energy efficiency requirement in the amended

ASHRAE/IES standard referred to in subparagraph (A);

except that an energy conservation standard amended by the Secretary pursuant to a rule under subparagraph (B) shall become effective for products manufactured on or after a date which is four years after the date such rule is published in the Federal Register.

(b) Electric motors

(1) Except for definite purpose motors, special purpose motors, and those motors exempted by the Secretary under paragraph (2), each electric motor manufactured (alone or as a component of another piece of equipment) after the 60-month period beginning on October 24, 1992, or in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after the 84-month period beginning on October 24, 1992, shall have a nominal full load efficiency of not less than the following:

Number of poles	Nominal Full-Load Efficiency					
	Open Motors			Closed Motors		
	6	4	2	6	4	2
Motor Horsepower						
1	80.0	82.5	.....	80.0	82.5	75.5
1.5	84.0	84.0	82.5	85.5	84.0	82.5
2	85.5	84.0	84.0	86.5	84.0	84.0
3	86.5	86.5	84.0	87.5	87.5	85.5
5	87.5	87.5	85.5	87.5	87.5	87.5
7.5	88.5	88.5	87.5	89.5	89.5	88.5
10	90.2	89.5	88.5	89.5	89.5	89.5
15	90.2	91.0	89.5	90.2	91.0	90.2
20	91.0	91.0	90.2	90.2	91.0	90.2
25	91.7	91.7	91.0	91.7	92.4	91.0
30	92.4	92.4	91.0	91.7	92.4	91.0
40	93.0	93.0	91.7	93.0	93.0	91.7
50	93.0	93.0	92.4	93.0	93.0	92.4
60	93.6	93.6	93.0	93.6	93.6	93.0
75	93.6	94.1	93.0	93.6	94.1	93.0
100	94.1	94.1	93.0	94.1	94.5	93.6
125	94.1	94.5	93.6	94.1	94.5	94.5
150	94.5	95.0	93.6	95.0	95.0	94.5
200	94.5	95.0	94.5	95.0	95.0	95.0

(2)(A) The Secretary may, by rule, provide that the standards specified in paragraph (1) shall not apply to certain types or classes of electric motors if—

(i) compliance with such standards would not result in significant energy savings because such motors cannot be used in most general purpose applications or are very unlikely to be used in most general purpose applications; and

(ii) standards for such motors would not be technologically feasible or economically justified.

(B) Not later than one year after October 24, 1992, a manufacturer seeking an exemption under this paragraph with respect to a type or class of electric motor developed on or before October 24, 1992, shall submit a petition to the Secretary requesting such exemption. Such petition shall include evidence that the type or class of motor meets the criteria for exemption specified in subparagraph (A).

(C) Not later than two years after October 24, 1992, the Secretary shall rule on each petition for exemption submitted pursuant to subparagraph (B). In making such ruling, the Secretary shall afford an opportunity for public comment.

(D) Manufacturers of types or classes of motors developed after October 24, 1992, to which standards under paragraph (1) would be applicable may petition the Secretary for exemptions from compliance with such standards based on the criteria specified in subparagraph (A).

(3)(A) The Secretary shall publish a final rule no later than the end of the 24-month period beginning on the effective date of the standards established under paragraph (1) to determine if such standards should be amended. Such rule shall provide that any amendment shall apply to electric motors manufactured on or after a date which is five years after the effective date of the standards established under paragraph (1).

(B) The Secretary shall publish a final rule no later than 24 months after the effective date of the previous final rule to determine whether to amend the standards in effect for such product. Any such amendment shall apply to electric motors manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective.

(Pub. L. 94–163, title III, § 342, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3269; amended Pub. L. 102–486, title I, § 122(d), Oct. 24, 1992, 106 Stat. 2810.)

AMENDMENTS

1992—Pub. L. 102–486 amended section generally, substituting present provisions for former provisions requiring Secretary to conduct evaluations of electric motors and pumps and other industrial equipment for purposes of determining standards.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6314, 6315, 6316 of this title.

§ 6314. Test procedures

(a) Prescription by Secretary; requirements

(1) The Secretary may conduct an evaluation of a class of covered equipment and may prescribe test procedures for such class in accordance with the provisions of this section.

(2) Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

(3) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle. The Secretary shall provide information to manufacturers of covered equipment respecting representative average unit costs of energy.

(4)(A) With respect to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks to which standards are applicable under section 6313 of this title, the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.

(B) If such an industry test procedure or rating procedure for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in paragraphs (2) and (3) of this subsection.

(C) If the Secretary prescribes a rule containing such a determination, the rule may establish an amended test procedure for such product that meets the requirements of paragraphs (2) and (3) of this subsection. In establishing any amended test procedure under this subparagraph or subparagraph (B), the Secretary shall follow the procedures and meet the requirements specified in section 6293(e) of this title.

(5)(A) With respect to electric motors to which standards are applicable under section 6313 of this title, the test procedures shall be the test procedures specified in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992.

(B) If the test procedure requirements of NEMA Standards Publication MG–1987 and IEEE Standard 112 Test Method B for motor efficiency are amended, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such amended test procedure requirements unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in paragraphs (2) and (3) of this subsection.

(C) If the Secretary prescribes a rule containing such a determination, the rule may establish amended test procedures for such electric motors that meets the requirements of paragraphs (2) and (3) of this subsection. In establishing any amended test procedure under this subparagraph or subparagraph (B), the Secretary shall follow the procedures and meet the requirements specified in section 6293(e) of this title.

(b) Publication in Federal Register; presentment of oral and written data, views, and arguments by interested persons

Before prescribing any final test procedures under this section, the Secretary shall—

(1) publish proposed test procedures in the Federal Register; and

(2) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures.

(c) Reevaluations

(1) The Secretary shall, not later than 3 years after the date of prescribing a test procedure under this section (and from time to time thereafter), conduct a reevaluation of such procedure and, on the basis of such reevaluation, shall determine if such test procedure should be amended. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered equipment involved.

(2) If the Secretary determines under paragraph (1) that a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days' duration.

(d) Prohibited representations

(1) Effective 180 days (or, in the case of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, 360 days) after a test procedure rule applicable to any covered equipment is prescribed under this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including any representation on a label), or

(B) in any broadcast advertisement,

respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Secretary).

(e) Assistance by National Institute of Standards and Technology

The Secretary may direct the National Institute of Standards and Technology to provide

such assistance as the Secretary deems necessary to carry out his responsibilities under this part, including the development of test procedures.

(Pub. L. 94–163, title III, § 343, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3270; amended Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–486, title I, § 122(b), (f)(2), Oct. 24, 1992, 106 Stat. 2808, 2817.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–486, § 122(b)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''If the Secretary has conducted an evaluation of a class of covered equipment under section 6313 of this title, he may prescribe test procedures for such class in accordance with the following provisions of this section.''

Subsec. (a)(4), (5). Pub. L. 102–486, § 122(b)(1)(B), added pars. (4) and (5).

Subsecs. (c), (d). Pub. L. 102–486, § 122(f)(2), redesignated subsec. (d), relating to reevaluations, as (c).

Subsec. (d)(1). Pub. L. 102–486, § 122(b)(2), inserted ''(or, in the case of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, 360 days)'' after ''180 days''.

1988—Subsec. (e). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6311, 6315, 6316 of this title.

§ 6315. Labeling

(a) Prescription by Secretary

If the Secretary has prescribed test procedures under section 6314 of this title for any class of covered equipment, he shall prescribe a labeling rule applicable to such class of covered equipment in accordance with the following provisions of this section.

(b) Disclosure of energy efficiency of articles of covered equipment

A labeling rule prescribed in accordance with this section shall require that each article of covered equipment which is in the type (or class) of industrial equipment to which such rule applies, discloses by label, the energy efficiency of such article, determined in accordance with test procedures under section 6314 of this title. Such rule may also require that such disclosure include the estimated operating costs and energy use, determined in accordance with test procedures under section 6314 of this title.

(c) Inclusion of requirements

A rule prescribed in accordance with this section shall include such requirements as the Secretary determines are likely to assist purchasers in making purchasing decisions, including—

(1) requirements and directions for display of any label,

(2) requirements for including on any label, or separately attaching to, or shipping with, the covered equipment, such additional information relating to energy efficiency, energy use, and other measures of energy consumption, including instructions for the maintenance, use, or repair of the covered equipment, as the Secretary determines necessary to provide adequate information to purchasers, and

(3) requirements that printed matter which is displayed or distributed at the point of sale of such equipment shall disclose such information as may be required under this section to be disclosed on the label of such equipment.

(d) Labeling rules applicable to electric motors

Subject to subsection (h) of this section, not later than 12 months after the Secretary establishes test procedures for electric motors under section 6314 of this title, the Secretary shall prescribe labeling rules under this section applicable to electric motors taking into consideration NEMA Standards Publication MG1–1987. Such rules shall provide that the labeling of any electric motor manufactured after the 12-month period beginning on the date the Secretary prescribes such labeling rules, shall—

(1) indicate the energy efficiency of the motor on the permanent nameplate attached to such motor;

(2) prominently display the energy efficiency of the motor in equipment catalogs and other material used to market the equipment; and

(3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for electric motors under section 6313 of this title.

(e) Labeling rules for air conditioning and heating equipment

Subject to subsection (h) of this section, not later than 12 months after the Secretary establishes test procedures for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks under section 6314 of this title, the Secretary shall prescribe labeling rules under this section for such equipment. Such rules shall provide that the labeling of any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, warm-air furnace, packaged boiler, storage water heater, instantaneous water heater, and unfired hot water storage tank manufactured after the 12-month period beginning on the date the Secretary prescribes such rules shall—

(1) indicate the energy efficiency of the equipment on the permanent nameplate attached to such equipment or other nearby permanent marking;

(2) prominently display the energy efficiency of the equipment in new equipment catalogs used by the manufacturer to advertise the equipment; and

(3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for such equipment under section 6313 of this title.

(f) Consultation with Federal Trade Commission

Before prescribing any labeling rules for a type (or class) of covered equipment, the Secretary shall consult with, and obtain the written views of, the Federal Trade Commission with respect to such rules. The Federal Trade Commission shall promptly provide such written views upon the request of the Secretary.

(g) Publication in Federal Register; presentment of oral and written data, views, and arguments of interested persons

(1) Before prescribing any labeling rules under this section, the Secretary shall—

(A) publish proposed labeling rules in the Federal Register, and

(B) afford interested persons an opportunity (of not less than 45 days' duration) to pre- sent oral and written data, views, and arguments on the proposed rules.

(2) A labeling rule prescribed under this section shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Secretary determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(h) Restrictions on Secretary's authority to promulgate rules

The Secretary shall not promulgate labeling rules for any class of industrial equipment unless he has determined that—

(1) labeling in accordance with this section is technologically and economically feasible with respect to such class;

(2) significant energy savings will likely result from such labeling; and

(3) labeling in accordance with this section is likely to assist consumers in making purchasing decisions.

(i) Tests for accuracy of information contained on labels

When requested by the Secretary, any manufacturer of industrial equipment to which a rule under this section applies shall supply at the manufacturer's expense a reasonable number of articles of such covered equipment to any laboratory or testing facility designated by the Secretary, or permit representatives of such laboratory or facility to test such equipment at the site where it is located, for purposes of ascertaining whether the information set out on the label, or otherwise required to be disclosed, as required under this section, is accurate. Any reasonable charge levied by the laboratory or facility for such testing shall be borne by the United States, if and to the extent provided in appropriations Acts.

(j) Products completed prior to effective date of rules

A labeling rule under this section shall not apply to any article of covered equipment the manufacture of which was completed before the effective date of such rule.

(k) Labeling authority under Federal Trade Commission Act

Until such time as labeling rules under this section take effect with respect to a type (or class) of covered equipment, this section shall not affect any authority of the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to require labeling with respect to energy consumption of such type (or class) of covered equipment.

(Pub. L. 94–163, title III, § 344, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3271; amended Pub. L. 102–486, title I, § 122(c), Oct. 24, 1992, 106 Stat. 2809.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (k), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486, § 122(c)(1), substituted ''shall prescribe'' for ''may prescribe''.

Subsec. (c). Pub. L. 102–486, § 122(c)(2), substituted ''shall include'' for ''may include''.

Subsecs. (d) to (k). Pub. L. 102–486, § 122(c)(3), (4), added subsecs. (d) and (e) and redesignated former subsecs. (d) to (i) as (f) to (k), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6316. Administration, penalties, enforcement, and preemption

(a) The provisions of section 6296(a), (b), and (d) of this title, the provisions of subsections (*l*) through (s) of section 6295 of this title, and section[1] 6297 through 6306 of this title shall apply with respect to this part (other than the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(1) of this title) to the same extent and in the same manner as they apply in part A of this subchapter. In applying such provisions for the purposes of this part—

(1) references to sections 6293, 6294, and 6295 of this title shall be considered as references to sections 6314, 6315, and 6313 of this title, respectively;

(2) references to ''this part'' shall be treated as referring to part A–1 of this subchapter;

(3) the term ''equipment'' shall be substituted for the term ''product'';

(4) the term ''Secretary'' shall be substituted for ''Commission'' each place it appears (other than in section 6303(c) of title);

(5) section 6297(a) of this title shall be applied, in the case of electric motors, as if the National Appliance Energy Conservation Act of 1987 was the Energy Policy Act of 1992;

(6) section 6297(b)(1) of this title shall be applied as if electric motors were fluorescent lamp ballasts and as if the National Appliance Energy Conservation Amendments of 1988 were the Energy Policy Act of 1992;

(7) section 6297(b)(4) of this title shall be applied as if electric motors were fluorescent lamp ballasts and as if paragraph (5) of section 6295(g) of this title were section 6313 of this title; and

(8) notwithstanding any other provision of law, a regulation or other requirement adopt-

[1] So in original. Probably should be ''sections''.

ed by a State or subdivision of a State contained in a State or local building code for new construction concerning the energy efficiency or energy use of an electric motor covered under this part is not superseded by the standards for such electric motor established or prescribed under section 6313(b) of this title if such regulation or requirement is identical to the standards established or prescribed under such section.

(b)(1) The provisions of section 6296(a), (b), and (d) of this title, section 6297(a) of this title, and sections 6298 through 6306 of this title shall apply with respect to the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(1) of this title to the same extent and in the same manner as they apply in part B of this subchapter. In applying such provisions for the purposes of such equipment, paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall apply.

(2)(A) A standard prescribed or established under section 6313(a) of this title shall, beginning on the effective date of such standard, supersede any State or local regulation concerning the energy efficiency or energy use of a product for which a standard is prescribed or established pursuant to such section.

(B) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede a standard for such a product contained in a State or local building code for new construction if—

(i) the standard in the building code does not require that the energy efficiency of such product exceed the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1; and

(ii) the standard in the building code does not take effect prior to the effective date of the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1.

(C) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede the standards established by the State of California set forth in Table C–6, California Code of Regulations, Title 24, Part 2, Chapter 2–53, for water-source heat pumps below 135,000 Btu per hour (cooling capacity) that become effective on January 1, 1993.

(D) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede a State regulation which has been granted a waiver by the Secretary. The Secretary may grant a waiver pursuant to the terms, conditions, criteria, procedures, and other requirements specified in section 6297(d) of this title.

(c) With respect to any electric motor to which standards are applicable under section 6313(b) of this title, the Secretary shall require manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable.[2]

(Pub. L. 94–163, title III, §345, as added Pub. L. 95–619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3272; amended Pub. L. 102–486, title I, §122(e), Oct. 24, 1992, 106 Stat. 2815.)

[2] So in original.

REFERENCES IN TEXT

The National Appliance Energy Conservation Act of 1987, referred to in subsec. (a)(5), is Pub. L. 100–12, Mar. 17, 1987, 101 Stat. 103. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6201 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsec. (a)(5), (6), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The National Appliance Energy Conservation Amendments of 1988, referred to in subsec. (a)(6), is Pub. L. 100–357, June 28, 1988, 102 Stat. 671. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6201 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–486, §122(e)(3), substituted ''enforcement, and preemption'' for ''and enforcement'' in section catchline.

Subsec. (a). Pub. L. 102–486, §122(e)(1)(A), inserted ''(other than the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(*l*) of this title)'' after ''to this part'' and substituted '', the provisions of subsections (*l*) through (s) of section 6295 of this title, and section 6297'' for ''and sections 6298''.

Subsec. (a)(1). Pub. L. 102–486, §122(e)(1)(B), substituted '', 6294, and 6295 of this title'' for ''and 6294 of this title'' and ''6314, 6315, and 6313 of this title, respectively'' for ''6314 and 6315 of this title, respectively''.

Subsec. (a)(5) to (8). Pub. L. 102–486, §122(e)(1)(C)–(E), added pars. (5) to (8).

Subsecs. (b), (c). Pub. L. 102–486, §122(e)(2), added subsecs. (b) and (c).

§ 6317. Energy conservation standards for high-intensity discharge lamps, distribution transformers, and small electric motors

(a) High-intensity discharge lamps and distribution transformers

(1) The Secretary shall, within 30 months after October 24, 1992, prescribe testing requirements for those high-intensity discharge lamps and distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

(2) The Secretary shall, within 18 months after the date on which testing requirements are prescribed by the Secretary pursuant to paragraph (1), prescribe, by rule, energy conservation standards for those high-intensity discharge lamps and distribution transformers for which the Secretary prescribed testing requirements under paragraph (1).

(3) Any standard prescribed under paragraph (2) with respect to high-intensity discharge lamps shall apply to such lamps manufactured 36 months after the date such rule is published.

(b) Small electric motors

(1) The Secretary shall, within 30 months after October 24, 1992, prescribe testing requirements for those small electric motors for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

(2) The Secretary shall, within 18 months after the date on which testing requirements are prescribed by the Secretary pursuant to paragraph (1), prescribe, by rule, energy conservation standards for those small electric motors for which the Secretary prescribed testing requirements under paragraph (1).

(3) Any standard prescribed under paragraph (2) shall apply to small electric motors manufactured 60 months after the date such rule is published or, in the case of small electric motors which require listing or certification by a nationally recognized testing laboratory, 84 months after such date. Such standards shall not apply to any small electric motor which is a component of a covered product under section 6292(a) of this title or a covered equipment under section 6311 of this title.

(c) Consideration of criteria under other law

In establishing any standard under this section, the Secretary shall take into consideration the criteria contained in section 6295(n) of this title.

(d) Prescription of labeling requirements by Secretary

The Secretary shall, within six months after the date on which energy conservation standards are prescribed by the Secretary for high-intensity discharge lamps and distribution transformers pursuant to subsection (a)(2) of this section and small electric motors pursuant to subsection (b)(2) of this section, prescribe labeling requirements for such lamps, transformers, and small electric motors.

(e) Compliance by manufacturers with labeling requirements

Beginning on the date which occurs six months after the date on which a labeling rule is prescribed for a product under subsection (d) of this section, each manufacturer of a product to which such a rule applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule.

(f) New covered products; distribution of nonconforming products prohibited; construction with other law

(1) After the date on which a manufacturer must provide a label for a product pursuant to subsection (e) of this section—

(A) each such product shall be considered, for purposes of paragraphs (1) and (2) of section 6302(a) of this title, a new covered product to which a rule under section 6294 of this title applies; and

(B) it shall be unlawful for any manufacturer or private labeler to distribute in commerce any new product for which an energy conservation standard is prescribed under subsection (a)(2) or (b)(2) of this section which is not in conformity with the applicable energy conservation standard.

(2) For purposes of section 6303(a) of this title, paragraph (1) of this subsection shall be considered to be a part of section 6302 of this title.

(Pub. L. 94–163, title III, § 346, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3272; amended Pub. L. 102–486, title I, § 124(a), Oct. 24, 1992, 106 Stat. 2832.)

AMENDMENTS

1992—Pub. L. 102–486 amended section generally, substituting provisions requiring energy conservation standards for high-intensity discharge lamps, distribution transformers, and small electric motors, for provisions authorizing appropriations for fiscal years 1978 and 1979.

STUDY OF UTILITY DISTRIBUTION TRANSFORMERS; REPORT TO CONGRESS

Section 124(c) of Pub. L. 102–486 provided that: ''The Secretary shall evaluate the practicability, cost-effectiveness, and potential energy savings of replacing, or upgrading components of, existing utility distribution transformers during routine maintenance and, not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], report the findings of such evaluation to the Congress with recommendations on how such energy savings, if any, could be achieved.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6295 of this title.

PART B—STATE ENERGY CONSERVATION PLANS

CODIFICATION

This part, originally designated part C and subsequently redesignated part D by Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part B for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6316, 6323a, 6851 of this title; title 12 section 1701z–8; title 15 section 4507.

§ 6321. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the development and implementation by States of laws, policies, programs, and procedures to conserve and to improve efficiency in the use of energy will have an immediate and substantial effect in reducing the rate of growth of energy demand and in minimizing the adverse social, economic, political, and environmental impacts of increasing energy consumption;

(2) the development and implementation of energy conservation programs by States will most efficiently and effectively minimize any adverse economic or employment impacts of changing patterns of energy use and meet local economic, climatic, geographic, and other unique conditions and requirements of each State; and

(3) the Federal Government has a responsibility to foster and promote comprehensive energy conservation programs and practices by establishing guidelines for such programs and providing overall coordination, technical assistance, and financial support for specific State initiatives in energy conservation.

(b) It is the purpose of this part to promote the conservation of energy and reduce the rate of growth of energy demand by authorizing the Secretary to establish procedures and guidelines for the development and implementation of specific State energy conservation programs and to provide Federal financial and technical assistance to States in support of such programs.

(Pub. L. 94–163, title III, § 361, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

REPORT ON COORDINATION OF ENERGY CONSERVATION PROGRAMS

Section 623 of Pub. L. 95–619 provided that not later than 6 months after Nov. 9, 1978, the Secretary of Energy submit a report on the coordination of Federal energy conservation programs involving State and local government.

CROSS REFERENCES

Emergency energy conservation program, see section 8511 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6323a of this title.

§ 6322. State energy conservation plans

(a) Feasibility reports

The Secretary shall, by rule, within 60 days after December 22, 1975, prescribe guidelines for the preparation of a State energy conservation feasibility report. The Secretary shall invite the Governor of each State to submit, within 3 months after the effective date of such guidelines, such a report. Such report shall include—

(1) an assessment of the feasibility of establishing a State energy conservation goal, which goal shall consist of a reduction, as a result of the implementation the[1] State energy conservation plan described in this section, of 5 percent or more in the total amount of energy consumed in such State in the year 1980 from the projected energy consumption for such State in the year 1980, and

(2) a proposal by such State for the development of a State energy conservation plan to achieve such goal.

(b) Guidelines

The Secretary shall, by rule, within 6 months after December 22, 1975, prescribe guidelines with respect to measures required to be included in, and guidelines for the development, modification, and funding of, State energy conservation plans. The Secretary shall invite the Governor of each State to submit, within 5 months after the effective date of such guidelines, a report. Such report shall include—

(1) a proposed State energy conservation plan designed to result in scheduled progress toward, and achievement of, the State energy conservation goal of such State; and

(2) a detailed description of the requirements, including the estimated cost of implementation and the estimated energy savings, associated with each functional category of energy conservation included in the State energy conservation plan.

(c) Mandatory features of plans

Each proposed State energy conservation plan to be eligible for Federal assistance under this part shall include—

(1) mandatory lighting efficiency standards for public buildings (except public buildings owned or leased by the United States);

(2) programs to promote the availability and use of carpools, vanpools, and public transportation (except that no Federal funds provided under this part shall be used for subsidizing fares for public transportation);

(3) mandatory standards and policies relating to energy efficiency to govern the procurement practices of such State and its political subdivisions;

(4) mandatory thermal efficiency standards and insulation requirements for new and renovated buildings (except buildings owned or leased by the United States);

(5) a traffic law or regulation which, to the maximum extent practicable consistent with safety, permits the operator of a motor vehicle to turn such vehicle right at a red stop light after stopping and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping; and

(6) procedures for ensuring effective coordination among various local, State, and Federal energy conservation programs within the State, including any program administered within the Office of Technical and Financial Assistance of the Department of Energy and the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services.

(d) Optional features of plans

Each proposed State energy conservation plan may include—

(1) restrictions governing the hours and conditions of operation of public buildings (except buildings owned or leased by the United States);

(2) restrictions on the use of decorative or nonessential lighting;

(3) programs to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels for State government vehicles, fleet vehicles, taxies, mass transit, and privately owned vehicles;

(4) programs of public education to promote energy conservation;

(5) programs for financing energy efficiency and renewable energy capital investments, projects, and programs—

(A) which may include loan programs and performance contracting programs for leveraging of additional public and private sector funds, and programs which allow rebates, grants, or other incentives for the purchase and installation of energy efficiency and renewable energy measures; or

(B) in addition to or in lieu of programs described in subparagraph (A), which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of title 26;

(6) programs for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;

(7) programs to promote the adoption of integrated energy plans which provide for—

[1] So in original. Probably should be ''of the''.

(A) periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs; and

(B) utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(8) programs to promote energy efficiency in residential housing, such as—

(A) programs for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and

(B) programs for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;

(9) programs to identify unfair or deceptive acts or practices which relate to the implementation of energy efficiency measures and renewable resource energy measures and to educate consumers concerning such acts or practices;

(10) programs to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;

(11) programs to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities;

(12) in accordance with subsection (g)[2] of this section, programs to implement the Energy Technology Commercialization Services Program;

(13) programs (enlisting appropriate trade and professional organizations in the development and financing of such programs) to provide training and education (including, if appropriate, training workshops, practice manuals, and testing for each area of energy efficiency technology) to building designers and contractors involved in building design and construction or in the sale, installation, and maintenance of energy systems and equipment to promote building energy efficiency improvements;

(14) programs for the development of building retrofit standards and regulations, including retrofit ordinances enforced at the time of the sale of a building;

(15) support for prefeasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;

(16) programs to facilitate and encourage the voluntary use of renewable energy technologies for eligible participants in Federal agency programs, including the Rural Electrification Administration and the Farmers Home Administration; and

(17) any other appropriate method or programs to conserve and to promote efficiency in the use of energy.

[2] So in original. Probably should be subsection ''(f)''.

(e) Standby plans

The Governor of any State may submit to the Secretary a State energy conservation plan which is a standby energy conservation plan to significantly reduce energy demand by regulating the public and private consumption of energy during a severe energy supply interruption, which plan may be separately eligible for Federal assistance under this part without regard to subsections (c) and (d) of this section.

(f) Energy Technology Commercialization Services Program

(1) The purposes of this subsection are to—

(A) strengthen State outreach programs to aid small and start-up businesses;

(B) foster a broader application of engineering principles and techniques to energy technology products, manufacturing, and commercial production by small and start-up businesses; and

(C) foster greater assistance to small and start-up businesses in dealing with the Federal Government on energy technology related matters.

(2) The programs to implement the functions of the Energy Technology Commercialization Services Program, as provided for by subsection (d)(12) of this section, shall—

(A) aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;

(B) encourage the application of such information in order to solve energy technology product development and manufacturing problems;

(C) establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;

(D) coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;

(E) assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and

(F) facilitate contract research between university faculty and students and small start-up businesses, in order to improve energy technology product development and independent quality control testing.

(3) Each State energy technology commercialization services program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and national laboratory personnel.

(4) The services provided by the energy technology commercialization services programs established under this subsection shall be available to any small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which

shall be determined by examining factors, including the following: (A) the costs of the services received; (B) the need of the recipient for the services; and (C) the ability of the recipient to pay for the services.

(5) For the purposes of this subsection, the term—

(A) ''institution of higher education'' has the same meaning as such term is defined in section 1141(a) of title 20;

(B) ''small business'' means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 632(a) of title 15 for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy; and

(C) ''start-up business'' means a small business which has been in existence for 5 years or less.

(Pub. L. 94–163, title III, §362, Dec. 22, 1975, 89 Stat. 933; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, §§3(a), 4(a), (b), Oct. 18, 1990, 104 Stat. 1006–1008; Pub. L. 102–486, title I, §141(b), (c)(1), Oct. 24, 1992, 106 Stat. 2841.)

AMENDMENTS

1992—Subsec. (c)(5). Pub. L. 102–486, §141(c)(1), substituted ''and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping; and'' for ''; and''.

Subsec. (d)(13) to (17). Pub. L. 102–486, §141(b), added pars. (13) to (16) and redesignated former par. (13) as (17).

1990—Subsec. (c)(6). Pub. L. 101–440, §3(a), added par. (6).

Subsec. (d)(3). Pub. L. 101–440, §4(a)(1), added par. (3) and struck out former par. (3) which read as follows: ''transportation controls;''.

Subsec. (d)(5) to (13). Pub. L. 101–440, §4(a)(3), added pars. (5) to (13) and struck out former par. (5) which read as follows: ''any other appropriate method or programs to conserve and to improve efficiency in the use of energy.''

Subsec. (f). Pub. L. 101–440, §4(b), added subsec. (f).

1978—Subsecs. (a), (b), (e). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 141(c)(2) of Pub. L. 102–486 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect January 1, 1995.''

STUDY REGARDING IMPACT OF PERMITTING RIGHT AND LEFT TURNS ON RED LIGHTS

Section 141(d) of Pub. L. 102–486 provided that:

''(1) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration, in consultation with State agencies with jurisdiction over traffic safety issues, shall conduct a study on the safety impact of the requirement specified in section 362(c)(5) of the Energy Policy and Conservation Act (42 U.S.C. 6322(c)(5)), particularly with respect to the impact on pedestrian safety.

''(2) REPORT.—The Administrator shall report the findings of the study conducted under paragraph (1) to the Congress and the Secretary not later than 2 years after the date of the enactment of this Act [Oct. 24, 1992].''

CROSS REFERENCES

State emergency energy conservation plan, see section 8512 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5511a, 6323, 6323a, 6325, 6371 of this title.

§ 6323. Federal assistance to States

(a) Information, technical assistance, and assistance in preparation of reports and development, implementation, or modification of energy conservation plan

Upon request of the Governor of any State, the Secretary shall provide, subject to the availability of personnel and funds, information and technical assistance, including model State laws and proposed regulations relating to energy conservation, and other assistance in—

(1) the preparation of the reports described in section 6322 of this title, and

(2) the development, implementation, or modification of an energy conservation plan of such State submitted under section 6322(b) or (e) of this title.

(b) Financial assistance to assist State in development, implementation, or modification of energy conservation plan; submission of plan to and approval of Secretary; considerations governing approval; amount of assistance

(1) The Secretary may grant Federal financial assistance pursuant to this section for the purpose of assisting such State in the development of any such energy conservation plan or in the implementation or modification of a State energy conservation plan or part thereof which has been submitted to and approved by the Secretary pursuant to this part.

(2) In determining whether to approve a State energy conservation plan submitted under section 6322(b) or (e) of this title, the Secretary—

(A) shall take into account the impact of local economic, climatic, geographic, and other unique conditions and requirements of such State on the opportunity to conserve and to improve efficiency in the use of energy in such State; and

(B) may extend the period of time during which a State energy conservation feasibility report or State energy conservation plan may be submitted if the Secretary determines that participation by the State submitting such report or plan is likely to result in significant progress toward achieving the purposes of this chapter.

No such plan shall be disapproved without notice and an opportunity to present views.

(3) In determining the amount of Federal financial assistance to be provided to any State under this subsection, the Secretary shall consider—

(A) the contribution to energy conservation which can reasonably be expected,

(B) the number of people affected by such plan, and

(C) the consistency of such plan with the purposes of this chapter, and such other factors as the Secretary deems appropriate.

(c) Records

Each recipient of Federal financial assistance under subsection (b) of this section shall keep such records as the Secretary shall require, in-

cluding records which fully disclose the amount and disposition by each recipient of the proceeds of such assistance, the total cost of the plan, program, projects, measures, or systems for which such assistance was given or used, the source and amount of funds for such plan, program, projects, measures, or systems not supplied by the Secretary, and such other records as the Secretary determines necessary to facilitate an effective audit and performance evaluation. The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, at reasonable times and under reasonable conditions, to any pertinent books, documents, papers, and records of any recipient of Federal assistance under this part.

(d) Assistance as supplementing and not supplanting State and local funds

Each State receiving Federal financial assistance pursuant to this section shall provide reasonable assurance to the Secretary that it has established policies and procedures designed to assure that Federal financial assistance under this part and under part E of this subchapter will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for those programs set forth in the State energy conservation plan approved pursuant to subsection (b) of this section.

(e) Energy emergency planning program as prerequisite to assistance

(1) Effective October 1, 1991, to be eligible for Federal financial assistance pursuant to this section, a State shall submit to the Secretary, as a supplement to its energy conservation plan, an energy emergency planning program for an energy supply disruption, as designed by the State consistent with applicable Federal and State law. The contingency plan provided for by the program shall include an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies. The submission of such plan shall be for informational purposes only and without any requirement of approval by the Secretary.

(2) Federal financial assistance made available under this part to a State may be used to develop and conduct the energy emergency planning program requirement referred to in paragraph (1).

(f) State buildings energy efficiency improvements incentive fund

If the Secretary determines that a State has demonstrated a commitment to improving the energy efficiency of buildings within such State, the Secretary may, beginning in fiscal year 1994, provide up to $1,000,000 to such State for deposit into a revolving fund established by such State for the purpose of financing energy efficiency improvements in State and local government buildings. In making such determination the Secretary shall consider whether—

(1) such State, or a majority of the units of local government with jurisdiction over building energy codes within such State, has adopted codes for energy efficiency in new buildings that are at least as stringent as American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1–1989 (with respect to commercial buildings) and Council of American Building Officials Model Energy Code, 1992 (with respect to residential buildings);

(2) such State has established a program, including a revolving fund, to finance energy efficiency improvement projects in State and local government facilities and buildings; and

(3) such State has obtained funding from non-Federal sources, including but not limited to, oil overcharge funds, State or local government appropriations, or utility contributions (including rebates) equal to or greater than three times the amount provided by the Secretary under this subsection for deposit into such revolving fund.

(Pub. L. 94–163, title III, § 363, Dec. 22, 1975, 89 Stat. 934; Pub. L. 94–385, title IV, § 432(b), (c), Aug. 14, 1976, 90 Stat. 1162; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, § 3(b), Oct. 18, 1990, 104 Stat. 1007; Pub. L. 102–486, title I, § 141(a)(1), Oct. 24, 1992, 106 Stat. 2840.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2)(B), (3)(C), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–486 added subsec. (f).

1990—Subsecs. (d), (e). Pub. L. 101–440 added subsecs. (d) and (e).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

1976—Subsec. (b)(2). Pub. L. 94–385, § 432(b), inserted provision requiring notice and opportunity to present views prior to disapproval of plans.

Subsec. (c). Pub. L. 94–385, § 432(c), inserted references to plan, measures, or systems wherever appearing and required that examinations be at reasonable times and under reasonable conditions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6325 of this title.

§ 6323a. Matching State contributions

For the base State Energy Conservation Program (part D of the Energy Policy and Conservation Act, sections 361 through 366 [42 U.S.C. 6321–6326]), each State will hereafter match in cash or in kind not less than 20 percent of the Federal contribution.

(Pub. L. 98–473, title I, § 101(c) [title II], Oct. 12, 1984, 98 Stat. 1837, 1861.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part D of title III of the Energy Policy and Conservation Act, as amended, is classified generally to this part (§ 6321 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98–473, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act:
Pub. L. 98–146, title II, Nov. 4, 1983, 97 Stat. 942.

§ 6324. State energy efficiency goals

Each State energy conservation plan with respect to which assistance is made available under this part on or after October 1, 1991, shall contain a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000 as compared to the calendar year 1990, and may contain interim goals.

(Pub. L. 94–163, title III, § 364, Dec. 22, 1975, 89 Stat. 935; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, § 2(a)(1), Oct. 18, 1990, 104 Stat. 1006.)

AMENDMENTS

1990—Pub. L. 101–440 amended section generally. Prior to amendment, section read as follows: ''Upon the basis of the reports submitted pursuant to this part and such other information as is available, the Secretary shall, at the earliest practicable date, set an energy conservation goal for each State for 1980 and may set interim goals. Such goal or goals shall consist of the maximum reduction in the consumption of energy during any year as a result of the implementation of the State energy conservation plan described in section 6322(b) of this title which is consistent with technological feasibility, financial resources, and economic objectives, by comparison with the projected energy consumption for such State in such year. The Secretary shall specify the assumptions used in the determination of the projected energy consumption in each State, taking into account population trends, economic growth, and the effects of national energy conservation programs.''

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

CROSS REFERENCES

Emergency energy conservation targets, see section 8511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6325 of this title.

§ 6325. General provisions

(a) Rules

The Secretary may prescribe such rules as may be necessary or appropriate to carry out his authority under this part.

(b) Departmental consultation

In carrying out the provisions of sections 6322 and 6324 of this title and subsection (a) of section 6323 of this title, the Secretary shall consult with appropriate departments and Federal agencies.

(c) Annual report

The Secretary shall report annually to the President and the Congress, and shall furnish copies of such report to the Governor of each State, on the operation of the program under this part. Such report shall include an estimate of the energy conservation achieved, the degree of State participation and achievement, a description of innovative conservation programs undertaken by individual States, and the recommendations of the Secretary, if any, for additional legislation.

(d) Duty of Federal Trade Commission to prevent unfair or deceptive practices or acts relating to implementation of energy measures

The Federal Trade Commission shall (1) cooperate with and assist State agencies which have primary responsibilities for the protection of consumers in activities aimed at preventing unfair and deceptive acts or practices affecting commerce which relate to the implementation of measures likely to conserve, or improve efficiency in the use of, energy, including energy conservation measures and renewable-resource energy measures, and (2) undertake its own program, pursuant to the Federal Trade Commission Act [15 U.S.C. 41 et seq.], to prevent unfair or deceptive acts or practices affecting commerce which relate to the implementation of any such measures.

(e) List of energy measures eligible for financial assistance; designation of types and requirements of energy audits

Within 90 days after August 14, 1976, the Secretary shall—

(1) develop, by rule after consultation with the Secretary of Housing and Urban Development, and publish a list of energy conservation measures and renewable-resource energy measures which are eligible (on a national or regional basis) for financial assistance pursuant to section 1701z–8 of title 12 or section 6881 of this title;

(2) designate, by rule, the types of, and requirements for, energy audits.

(f) Authorization of appropriations

(1) Except as provided in paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated not to exceed $25,000,000 for fiscal year 1991, $35,000,000 for fiscal year 1992, and $45,000,000 for fiscal year 1993.

(2) For the purposes of carrying out section 6323(f) of this title, there is authorized to be appropriated for fiscal year 1994 and each fiscal year thereafter such sums as may be necessary, to remain available until expended.

(g) State Energy Advisory Board

(1)(A) There is hereby established within the Department of Energy a State Energy Advisory Board (hereafter in this subsection referred to as the ''Board'') which shall consist of at least 18 and not more than 21 members appointed by the Secretary as soon as practicable but no later than September 30, 1991. At least eight of the members of the Board shall be persons who serve as directors of the State agency, or a division of such agency, responsible for developing State energy conservation plans pursuant to section 6322 of this title. At least four members shall be directors of State or local low income weatherization assistance programs. Other members shall be appointed from persons who have expe-

rience in energy efficiency or renewable energy programs from the private sector, consumer interest groups, utilities, public utility commissions, educational institutions, financial institutions, local government energy programs, or research institutions. A majority of the members of the Board shall be State employees.

(B)(i) Except as provided in clause (ii), the members of the Board shall serve a term of three years.

(ii) Of the members first appointed to the Board, one-third shall serve a term of one year, one-third shall serve a term of two years, and the remainder shall serve a term of three years, as specified by the Secretary.

(2) The Board shall—

(A) make recommendations to the Assistant Secretary for Conservation and Renewable Energy within the Department of Energy with respect to—

(i) the energy efficiency goals and objectives of the programs carried out under this part, part E of this subchapter, and under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.]; and

(ii) programmatic and administrative policies designed to strengthen and improve the programs referred to in clause (i), including actions that should be considered to encourage non-Federal resources (including private resources) to supplement Federal financial assistance;

(B) serve as a liaison between the States and such Department on energy efficiency and renewable energy resource programs; and

(C) encourage transfer of the results of research and development activities carried out by the Federal Government with respect to energy efficiency and renewable energy resource technologies.

(3) The Secretary shall designate one of the members of the Board to serve as its chairman and one to serve as its vice-chairman. The chairman and vice-chairman shall serve in those offices no longer than two years.

(4) The Secretary shall provide the Board with such reasonable services and facilities as may be necessary for the performance of its functions.

(5) The Board shall be nonpartisan.

(6) The Board may adopt administrative rules and procedures and may elect one of its members secretary of the Board.

(7) Consistent with Federal regulations, the Secretary shall reimburse members of the Board for expenses (including travel expenses) necessarily incurred by them in the performance of their duties.

(8) The Board shall meet at least twice a year and shall submit an annual report to the Secretary and the Congress on the activities carried out by the Board in the previous fiscal year, including an accounting of the expenses reimbursed under paragraph (7) with respect to the year for which the report is made and any recommendations it may have for administrative or legislative changes concerning the matters referred to in subparagraphs (A), (B), and (C) of paragraph (2).

(9) The Board shall continue until terminated by law.

(Pub. L. 94–163, title III, § 365, Dec. 22, 1975, 89 Stat. 935; Pub. L. 94–385, title IV, § 432(d), Aug. 14, 1976, 90 Stat. 1162; Pub. L. 95–619, title VI, §§ 621, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288; Pub. L. 101–440, §§ 5, 8(a), Oct. 18, 1990, 104 Stat. 1009, 1015; Pub. L. 102–486, title I, § 141(a)(2), Oct. 24, 1992, 106 Stat. 2841.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (d), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Energy Conservation and Production Act, referred to in subsec. (g)(2)(A)(i), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1125, as amended. Part A of title IV of the Act is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–486 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), for the purpose'' for ''For the purpose'', and added par. (2).

1990—Subsec. (f). Pub. L. 101–440, § 8(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''There are authorized to be appropriated for carrying out the provisions of this part (other than section 6327 of this title) $50,000,000 for fiscal year 1976, $50,000,000 for fiscal year 1977, $50,000,000 for fiscal year 1978, and $50,000,000 for fiscal year 1979.''

Subsec. (g). Pub. L. 101–440, § 5, added subsec. (g).

1978—Subsecs. (a) to (c), (e). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (f). Pub. L. 95–619, § 621, authorized to be appropriated $50,000,000 for fiscal year 1979.

1976—Subsec. (d). Pub. L. 94–385, § 432(d)(1), (2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 94–385, § 432(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 94–385, § 432(d)(1), (3), redesignated former subsec. (d) as (f) and inserted ''(other than section 6327 of this title)'' after ''part''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6326, 6371, 6865, 6881 of this title; title 12 section 1701z–8.

§ 6326. Definitions

As used in this part—

(1) The term ''appliance'' means any article, such as a room air-conditioner, refrigerator-freezer, or dishwasher, which the Secretary classifies as an appliance for purposes of this part.

(2) The term ''building'' means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

(3) The term ''energy audit'' means any process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of particular energy conservation measures or renewable-resource energy measures and which—

(A) is carried out in accordance with rules of the Secretary; and

(B) imposes—

(i) no direct costs, with respect to individuals who are occupants of dwelling units in any State having a supplemental State energy conservation plan approved under section 6327[1] of this title, and

(ii) only reasonable costs, as determined by the Secretary, with respect to any person not described in clause (i).

Rules referred to in subparagraph (A) may include minimum qualifications for, and provisions with respect to conflicts of interest of, persons carrying out such energy audits.

(4) The term ''energy conservation measure'' means a measure which modifies any building, building system, energy consuming device associated with the building, or industrial plant, the construction of which has been completed prior to May 1, 1989, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to be likely to maintain or improve the efficiency of energy use and to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(A) the useful life of the modification involved, as determined by the Secretary, or

(B) 15 years after the purchase and installation of such measure,

whichever is less. Such term does not include (i) the purchase or installation of any appliance, (ii) any conversion from one fuel or source of energy to another which is of a type which the Secretary, by rule, determines is ineligible on the basis that such type of conversion is inconsistent with national policy with respect to energy conservation or reduction of imports of fuels, or (iii) any measure, or type of measure, which the Secretary determines does not have as its primary purpose an improvement in efficiency of energy use.

(5) The term ''industrial plant'' means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

(6) The term ''renewable-resource energy measure'' means a measure which modifies any building or industrial plant, the construction of which has been completed prior to August 14, 1976, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to—

(A) involve changing, in whole or in part, the fuel or source of the energy used to meet the requirements of such building or plant from a depletable source of energy to a nondepletable source of energy; and

(B) be likely to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(i) the useful life of the modification involved, as determined by the Secretary, or

(ii) 25 years after the purchase and installation of such measure,

whichever is less.

Such term does not include the purchase or installation of any appliance.

(7) The term ''public building'' means any building which is open to the public during normal business hours.

(8) The term ''transportation controls'' means any plan, procedure, method, or arrangement, or any system of incentives, disincentives, restrictions, and requirements, which is designed to reduce the amount of energy consumed in transportation, except that the term does not include rationing of gasoline or diesel fuel.

(Pub. L. 94–163, title III, § 366, Dec. 22, 1975, 89 Stat. 935; Pub. L. 94–385, title IV, § 431, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, § 2(b), Oct. 18, 1990, 104 Stat. 1006.)

REFERENCES IN TEXT

Section 6327 of this title, referred to in par. (3)(B)(i), was repealed by Pub. L. 101–440, § 4(c)(1), Oct. 18, 1990, 104 Stat. 1009.

AMENDMENTS

1990—Par. (4). Pub. L. 101–440 substituted ''building, building system, energy consuming device associated with the building, or industrial'' for ''building or industrial'', ''May 1, 1989'' for ''August 14, 1976'', and ''maintain or improve the efficiency'' for ''improve the efficiency''.

1978—Pars. (1), (3)(A), (B)(ii), (4), (A), (6), (B), (B)(i). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

1976—Pub. L. 94–385 redesignated former pars. (1) and (2) as (7) and (8), respectively, and added pars. (1) to (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6881 of this title; title 12 section 1701z–8.

§ 6327. Repealed. Pub. L. 101–440, § 4(c)(1), Oct. 18, 1990, 104 Stat. 1009

Section, Pub. L. 94–163, title III, § 367, as added Pub. L. 94–385, title IV, § 432(a), Aug. 14, 1976, 90 Stat. 1160; amended Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–619, title VI, §§ 622, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288, related to supplemental State energy conservation plans.

PART C—INDUSTRIAL ENERGY CONSERVATION

CODIFICATION

This part, originally designated part D and subsequently redesignated part E by Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part C for purposes of codification.

§§ 6341 to 6346. Repealed. Pub. L. 99–509, title III, § 3101(b), Oct. 21, 1986, 100 Stat. 1888

Section 6341, Pub. L. 94–163, title III, § 371, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–619, title VI, §§ 601(c),

[1] See References in Text note below.

691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288, defined terms used in this part.

Section 6342, Pub. L. 94–163, title III, § 372, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, directed Secretary to establish and maintain an energy efficient program.

Section 6343, Pub. L. 94–163, title III, § 373, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–619, title VI, §§ 601(a), 691(b)(2), Nov. 9, 1978, 92 Stat. 3282, 3288, directed Secretary to identify major energy-consuming industries and corporations in the United States.

Section 6344, Pub. L. 94–163, title III, § 374, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, directed Secretary to establish individual energy improvement targets for each of 10 most energy-consumptive industries.

Section 6344a, Pub. L. 94–163, title III, § 374A, as added Pub. L. 95–619, title IV, § 461(c), Nov. 9, 1978, 92 Stat. 3273, directed Secretary to set targets for increased utilization of energy-saving recovered materials for specified industries.

Section 6345, Pub. L. 94–163, title III, § 375, Dec. 22, 1975, 89 Stat. 937; Pub. L. 95–619, title VI, § 601(b), Nov. 9, 1978, 92 Stat. 3282, required reports from corporations to Secretary on progress made in improving energy efficiency and an annual report from Secretary to Congress and President on progress toward achieving energy efficiency program improvement targets.

Section 6346, Pub. L. 94–163, title III, § 376, Dec. 22, 1975, 89 Stat. 938; Pub. L. 95–619, title IV, § 461(d)(1), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288, contained general provisions relating to reporting and use of information under this part and to development of and compliance with energy efficiency improvement targets.

§ 6347. Omitted

CODIFICATION

Section, Pub. L. 96–294, title V, § 591, June 30, 1980, 94 Stat. 761, authorized appropriations to Secretary of Energy of $40,000,000 for each of fiscal years ending Sept. 30, 1981 and 1982, for industrial energy conservation demonstration projects designed to substantially increase productivity in industry.

Section was enacted as part of the Energy Security Act, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

§ 6348. Energy efficiency in industrial facilities

(a) Grant program

(1) In general

The Secretary shall make grants to industry associations to support programs to improve energy efficiency in industry. In order to be eligible for a grant under this subsection, an industry association shall establish a voluntary energy efficiency improvement target program.

(2) Awarding of grants

The Secretary shall request project proposals and provide annual grants on a competitive basis. In evaluating grant proposals under this subsection, the Secretary shall consider—

(A) potential energy savings;

(B) potential environmental benefits;

(C) the degree of cost sharing;

(D) the degree to which new and innovative technologies will be encouraged;

(E) the level of industry involvement;

(F) estimated project cost-effectiveness; and

(G) the degree to which progress toward the energy improvement targets can be monitored.

(3) Eligible projects

Projects eligible for grants under this subsection may include the following:

(A) Workshops.

(B) Training seminars.

(C) Handbooks.

(D) Newsletters.

(E) Data bases.

(F) Other activities approved by the Secretary.

(4) Limitation on cost sharing

Grants provided under this subsection shall not exceed $250,000 and each grant shall not exceed 75 percent of the total cost of the project for which the grant is made.

(5) Authorization

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(b) Award program

The Secretary shall establish an annual award program to recognize those industry associations or individual industrial companies that have significantly improved their energy efficiency.

(c) Report on industrial reporting and voluntary targets

Not later than one year after October 24, 1992, the Secretary shall, in consultation with affected industries, evaluate and report to the Congress regarding the establishment of Federally mandated energy efficiency reporting requirements and voluntary energy efficiency improvement targets for energy intensive industries. Such report shall include an evaluation of the costs and benefits of such reporting requirements and voluntary energy efficiency improvement targets, and recommendations regarding the role of such activities in improving energy efficiency in energy intensive industries.

(Pub. L. 102–486, title I, § 131, Oct. 24, 1992, 106 Stat. 2836.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

§ 6349. Process-oriented industrial energy efficiency

(a) Definitions

For the purposes of this section—

(1) the term ''covered industry'' means the food and food products industry, lumber and wood products industry, petroleum and coal products industry, and all other manufacturing industries specified in Standard Industrial Classification Codes 20 through 39 (or successor classification codes);

(2) the term ''process-oriented industrial assessment'' means—

(A) the identification of opportunities in the production process (from the introduction of materials to final packaging of the product for shipping) for—

(i) improving energy efficiency;

(ii) reducing environmental impact; and

(iii) designing technological improvements to increase competitiveness and achieve cost-effective product quality enhancement;

(B) the identification of opportunities for improving the energy efficiency of lighting, heating, ventilation, air conditioning, and the associated building envelope; and

(C) the identification of cost-effective opportunities for using renewable energy technology in the production process and in the systems described in subparagraph (B); and

(3) the term ''utility'' means any person, State agency (including any municipality), or Federal agency, which sells electric or gas energy to retail customers.

(b) Grant program

(1) Use of funds

The Secretary shall, to the extent funds are made available for such purpose, make grants to States which, consistent with State law, shall be used for the following purposes:

(A) To promote, through appropriate institutions such as universities, nonprofit organizations, State and local government entities, technical centers, utilities, and trade organizations, the use of energy-efficient technologies in covered industries.

(B) To establish programs to train individuals (on an industry-by-industry basis) in conducting process-oriented industrial assessments and to encourage the use of such trained assessors.

(C) To assist utilities in developing, testing, and evaluating energy efficiency programs and technologies for industrial customers in covered industries.

(2) Consultation

States receiving grants under this subsection shall consult with utilities and representatives of affected industries, as appropriate, in determining the most effective use of such funds consistent with the requirements of paragraph (1).

(3) Eligibility criteria

Not later than 1 year after October 24, 1992, the Secretary shall establish eligibility criteria for grants made pursuant to this subsection. Such criteria shall require a State applying for a grant to demonstrate that such State—

(A) pursuant to section 2621(a) of title 16, has considered and made a determination regarding the implementation of the standards specified in paragraphs (7) and (8) of section 2621(d) of title 16 (with respect to integrated resources planning and investments in conservation and demand management); and

(B) by legislation or regulation—

(i) allows utilities to recover the costs prudently incurred in providing process-oriented industrial assessments; and

(ii) encourages utilities to provide to covered industries—

(I) process-oriented industrial assessments; and

(II) financial incentives for implementing energy efficiency improvements.

(4) Allocation of funds

Grants made pursuant to this subsection shall be allocated each fiscal year among States meeting the criteria specified in paragraph (3) who have submitted applications 60 days before the first day of such fiscal year. Such allocation shall be made in accordance with a formula to be prescribed by the Secretary based on each State's share of value added in industry (as determined by the Census of Manufacturers) as a percentage of the value added by all such States.

(5) Renewal of grants

A grant under this subsection may continue to be renewed after 2 consecutive fiscal years during which a State receives a grant under this subsection, subject to the availability of funds, if—

(A) the Secretary determines that the funds made available to the State during the previous 2 years were used in a manner required under paragraph (1); and

(B) such State demonstrates, in a manner prescribed by the Secretary, utility participation in programs established pursuant to this subsection.

(6) Coordination with other Federal programs

In carrying out the functions described in paragraph (1), States shall, to the extent practicable, coordinate such functions with activities and programs conducted by the Energy Analysis and Diagnostic Centers of the Department of Energy and the Manufacturing Technology Centers of the National Institute of Standards and Technology.

(c) Other Federal assistance

(1) Assessment criteria

Not later than 2 years after October 24, 1992, the Secretary shall, by contract with nonprofit organizations with expertise in process-oriented industrial energy efficiency technologies, establish and, as appropriate, update criteria for conducting process-oriented industrial assessments on an industry-by-industry basis. Such criteria shall be made available to State and local government, public utility commissions, utilities, representatives of affected process-oriented industries, and other interested parties.

(2) Directory

The Secretary shall establish a nationwide directory of organizations offering industrial energy efficiency assessments, technologies, and services consistent with the purposes of this section. Such directory shall be made available to State governments, public utility commissions, utilities, industry representatives, and other interested parties.

(3) Award program

The Secretary shall establish an annual award program to recognize utilities operating outstanding or innovative industrial energy efficiency technology assistance programs.

(4) Meetings

In order to further the purposes of this section, the Secretary shall convene annual

meetings of parties interested in process-oriented industrial assessments, including representatives of State government, public utility commissions, utilities, and affected process-oriented industries.

(d) Report

Not later than 2 years after October 24, 1992, and annually thereafter, the Secretary shall submit to the Congress a report which—

(1) identifies barriers encountered in implementing this section;

(2) makes recommendations for overcoming such barriers;

(3) documents the results achieved by the programs established and grants awarded pursuant to this section;

(4) reviews any difficulties encountered by industry in securing and implementing energy efficiency technologies recommended in process-oriented industrial assessments or otherwise identified as a result of programs established pursuant to this section; and

(5) recommends methods for further promoting the distribution and implementation of energy efficiency technologies consistent with the purposes of this section.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(Pub. L. 102–486, title I, § 132, Oct. 24, 1992, 106 Stat. 2837.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

§ 6350. Industrial insulation and audit guidelines

(a) Voluntary guidelines for energy efficiency auditing and insulating

Not later than 18 months after October 24, 1992, the Secretary, after consultation with utilities, major industrial energy consumers, and representatives of the insulation industry, shall establish voluntary guidelines for—

(1) the conduct of energy efficiency audits of industrial facilities to identify cost-effective opportunities to increase energy efficiency; and

(2) the installation of insulation to achieve cost-effective increases in energy efficiency in industrial facilities.

(b) Educational and technical assistance

The Secretary shall conduct a program of educational and technical assistance to promote the use of the voluntary guidelines established under subsection (a) of this section.

(c) Report

Not later than 2 years after October 24, 1992, and biennially thereafter, the Secretary shall report to the Congress on activities conducted pursuant to this section, including—

(1) a review of the status of industrial energy auditing procedures; and

(2) an evaluation of the effectiveness of the guidelines established under subsection (a) of this section and the responsiveness of the industrial sector to such guidelines.

(Pub. L. 102–486, title I, § 133, Oct. 24, 1992, 106 Stat. 2840.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

PART D—OTHER FEDERAL ENERGY CONSERVATION MEASURES

CODIFICATION

This part, originally designated part E and subsequently redesignated part F by Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part D for purposes of codification.

§ 6361. Federal energy conservation programs

(a) Establishment and coordination of Federal agency actions

(1) The President shall, to the extent of his authority under other law, establish or coordinate Federal agency actions to develop mandatory standards with respect to energy conservation and energy efficiency to govern the procurement policies and decisions of the Federal Government and all Federal agencies, and shall take such steps as are necessary to cause such standards to be implemented.

(2) The President shall develop and, to the extent of his authority under other law, implement a 10-year plan for energy conservation with respect to buildings owned or leased by an agency of the United States. Such plan shall include mandatory lighting efficiency standards, mandatory thermal efficiency standards and insulation requirements, restrictions on hours of operation, thermostat controls, and other conditions of operation, and plans for replacing or retrofitting to meet such standards.

(b) Public education programs

(1) The Secretary shall establish and carry out a responsible public education program—

(A) to encourage energy conservation and energy efficiency; or

(B) to promote van pooling and carpooling arrangements.

(2) For purposes of this subsection:

(A) The term ''van'' means any automobile which the Secretary determines is manufactured primarily for use in the transportation of not less than 8 individuals and not more than 15 individuals.

(B) The term ''van pooling arrangement'' means an arrangement for the transportation of employees between their residences or other designated locations and their place of employment on a nonprofit basis in which the operating costs of such arrangement are paid for by the employees utilizing such arrangement.

(c) Report to Congress

The Secretary shall include in the report required under section 8258(b) of this title the steps taken under subsections (a) and (b) of this section.

(d) Applicability of plan to Executive agencies

The plan developed by the President pursuant to subsection (a)(2) of this section shall be applicable to Executive agencies as defined in section

105 of title 5 and to the United States Postal Service.

(e) Authorization of appropriations

In addition to funds authorized in any other law, there is authorized to be appropriated to the President for fiscal year 1978 not to exceed $25,000,000, and for fiscal year 1979 not to exceed $50,000,000, to carry out the purposes of subsection (a)(2) of this section.

(Pub. L. 94–163, title III, § 381, Dec. 22, 1975, 89 Stat. 939; Pub. L. 95–619, title V, § 501, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288; Pub. L. 100–615, § 2(b), Nov. 5, 1988, 102 Stat. 3189.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–615 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The President shall submit to the Congress an annual report concerning all steps taken under subsections (a) and (b) of this section.''

1978—Subsec. (b). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsecs. (d), (e). Pub. L. 95–619, § 501, added subsecs. (d) and (e).

TRANSFER OF FUNCTIONS

Functions vested in Secretary [formerly Administrator of Federal Energy Administration] under subsec. (b)(1)(B) of this section transferred to Secretary of Transportation by section 7159 of this title.

EX. ORD. NO. 12191. FEDERAL FACILITY RIDESHARING PROGRAM

Ex. Ord. No. 12191, Feb. 1, 1980, 45 F.R. 7997, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to increase ridesharing as a means to conserve petroleum, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work, it is hereby ordered as follows:

1–1. RESPONSIBILITIES OF EXECUTIVE AGENCIES

1–101. Executive agencies shall promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multi-occupancy modes of travel) by personnel working at Federal facilities. Agency actions pursuant to this Order shall be consistent with Circular A–118 issued by the Office of Management and Budget.

1–102. Agencies shall establish an annual ridesharing goal tailored to each facility, and expressed as a percentage of fulltime personnel working at that facility who use ridesharing in the commute between home and work. Agencies that share facilities or that are within easy walking distance of one another should coordinate their efforts to develop and implement ridesharing opportunities.

1–103. Agencies shall designate, in accordance with OMB Circular A–118, an employee transportation coordinator. Agencies that share facilities may designate a single transportation coordinator. The coordinator shall assist employees in forming carpools or vanpools (employee-owned or leased) and facilitate employee participation in ridesharing matching programs. The coordinator shall publicize within the facility the availability of public transportation. The coordinator shall also communicate employee needs for new or improved transportation service to the appropriate local public transit authorities or other organizations furnishing multi-passenger modes of travel.

1–104. Agencies shall report to the Administrator of General Services, hereinafter referred to as the Administrator, the goals established, the means developed to achieve those goals, and the progress achieved. These reports shall be in such form and frequency as the Administrator may require.

1–2. RESPONSIBILITIES OF THE ADMINISTRATOR OF GENERAL SERVICES

1–201. The Administrator shall issue such regulations as are necessary to implement this Order.

1–202. The Administrator may exempt small, remotely located Federal facilities from the requirements of Sections 1–102, 1–103, and 1–104 on his own initiative or upon request of the agency. An exemption shall be granted in whole or in part when, in the judgment of the Administrator, the requirements of those Sections would not yield significant ridesharing benefits.

1–203. The Administrator shall, in consultation with the Secretary of Transportation, periodically provide agencies with guidelines, instructions, and other practical aids for establishing, implementing, and improving their ridesharing programs.

1–204. The Administrator shall assist in coordinating the ridesharing activities of the agencies with the efforts of the Department of Energy, under the Federal Energy Management Program and in the development of an emergency energy conservation plan for the Federal government.

1–205. The Administrator shall take into consideration the advice of the Environmental Protection Agency under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.] in performing his responsibilities under this Order.

1–206. The Administrator shall, in consultation with the Secretary of Transportation, report annually to the President on the performance of the agencies in implementing the policies and actions contained in this Order. The report shall include (a) an assessment of each agency's performance, including the reasonableness of its goals and the adequacy of its effort, (b) a comparison of private sector and State and local government ridesharing efforts with those of the Federal government, and (c) recommendations for additional actions necessary to remove barriers or to provide additional incentives to encourage more ridesharing by personnel at Federal facilities.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7159 of this title.

§ 6362. Energy conservation policies and practices

(a) "Agency" defined

In this section, ''agency'' means—

(1) the Department of Transportation with respect to part A of subtitle VII of title 49, United States Code;

(2) the Interstate Commerce Commission;

(3) the Federal Maritime Commission; and

(4) the Federal Power Commission.

(b) Statement of probable impact of major regulatory action on energy efficiency

Except as provided in subsection (c) of this section, each of the agencies specified in subsection (a) of this section shall, where practicable and consistent with the exercise of their authority under other law, include in any major regulatory action (as defined by rule by each such agency) taken by each such agency, a statement of the probable impact of such major regulatory action on energy efficiency and energy conservation.

(c) Application of provisions to authority exercised to protect public health and safety

Subsection (b) of this section shall not apply to any authority exercised under any provision

of law designed to protect the public health or safety.

(Pub. L. 94–163, title III, § 382, Dec. 22, 1975, 89 Stat. 939; Pub. L. 103–272, § 4(h), July 5, 1994, 108 Stat. 1364.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–272, § 4(h)(1), added subsec. (a) and struck out former subsec. (a) which related to reports to Congress by Federal agencies, feasibility of additional savings in energy consumption, and administration of laws permitting inefficient use of energy.

Subsec. (b). Pub. L. 103–272, § 4(h)(2), substituted ''subsection (a)'' for ''subsection (a)(1)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 sections 1010, 1207.

§ 6363. Federal actions with respect to recycled oil

(a) Purpose

The purposes of this section are—

(1) to encourage the recycling of used oil;

(2) to promote the use of recycled oil;

(3) to reduce consumption of new oil by promoting increased utilization of recycled oil; and

(4) to reduce environmental hazards and wasteful practices associated with the disposal of used oil.

(b) Definitions

As used in this section:

(1) the term ''used oil'' means any oil which has been refined from crude oil, has been used, and as a result of such use has been contaminated by physical or chemical impurities.

(2) The term ''recycled oil'' means—

(A) used oil from which physical and chemical contaminants acquired through use have been removed by re-refining or other processing, or

(B) any blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives,

with respect to which the manufacturer has determined, pursuant to the rule prescribed under subsection (d)(1)(A)(i) of this section, is substantially equivalent to new oil for a particular end use.

(3) The term ''new oil'' means any oil which has been refined from crude oil and has not been used, and which may or may not contain additives. Such term does not include used oil or recycled oil.

(4) The term ''manufacturer'' means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(5) The term ''Commission'' means the Federal Trade Commission.

(c) Test procedures for determining substantial equivalency of recycled oil and new oil

As soon as practicable after December 22, 1975, the National Institute of Standards and Technology shall develop test procedures for the determination of substantial equivalency of re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives, with new oil for a particular end use. As soon as practicable after development of such test procedures, the National Institute of Standards and Technology shall report such procedures to the Commission.

(d) Promulgation of rules prescribing test procedures and labeling standards

(1)(A) Within 90 days after the date on which the Commission receives the report under subsection (c) of this section, the Commission shall, by rule, prescribe—

(i) test procedures for the determination of substantial equivalency of re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives, with new oil distributed for a particular end use; and

(ii) labeling standards applicable to containers of recycled oil in order to carry out the purposes of this section.

(B) Such labeling standards shall permit any container of recycled oil to bear a label indicating any particular end use for which a determination of substantial equivalency has been made pursuant to subparagraph (A)(i).

(2) Not later than the expiration of such 90-day period, the Administrator of the Environmental Protection Agency shall, by rule, prescribe labeling standards applicable to containers of new oil, used oil, and recycled oil relating to the proper disposal of such oils after use. Such standards shall be designed to reduce, to the maximum extent practicable, environmental hazards and wasteful practices associated with the disposal of such oils after use.

(e) Labeling standards

Beginning on the effective date of the standards prescribed pursuant to subsection (d)(1)(A) of this section—

(1) no rule or order of the Commission, other than the rules required to be prescribed pursuant to subsection (d)(1)(A) of this section, and no law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, rule, or order requires any container of recycled oil, which container bears a label in accordance with the terms of the rules prescribed under subsection (d)(1)(A) of this section, to bear any label with respect to the comparative characteristics of such recycled oil with new oil which is not identical to that permitted by the rule respecting labeling standards prescribed under subsection (d)(1)(A)(ii) of this section; and

(2) no rule or order of the Commission may require any container of recycled oil to also bear a label containing any term, phrase, or description which connotes less than substantial equivalency of such recycled oil with new oil.

(f) Conformity of acts of Federal officials to Commission rules

After the effective date of the rules required to be prescribed under subsection (d)(1)(A) of

this section, all Federal officials shall act within their authority to carry out the purposes of this section, including—

(1) revising procurement policies to encourage procurement of recycled oil for military and nonmilitary Federal uses whenever such recycled oil is available at prices competitive with new oil procured for the same end use; and

(2) educating persons employed by Federal and State governments and private sectors of the economy of the merits of recycled oil, the need for its use in order to reduce the drain on the Nation's oil reserves, and proper disposal of used oil to avoid waste of such oil and to minimize environmental hazards associated with improper disposal.

(Pub. L. 94–163, title III, § 383, Dec. 22, 1975, 89 Stat. 940; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards'' in two places.

APPLICABILITY OF LABELING STANDARDS

Pub. L. 96–463, § 4(c), Oct. 15, 1980, 94 Stat. 2056, provided: ''Before the effective date of the labeling standards required to be prescribed under section 383(d)(1)(A) of the Energy Policy and Conservation Act [subsec. (d)(1)(A) of this section], no requirement of any rule or order of the Federal Trade Commission may apply, or remain applicable, to any container of recycled oil (as defined in section 383(b) of such Act [subsec. (b) of this section]) if such requirement provides that the container must bear any label referring to the fact that it has been derived from previously used oil. Nothing in this subsection [this note] shall be construed to affect any labeling requirement applicable to recycled oil under any authority of law to the extent such requirement relates to fitness for intended use or any other performance characteristic of such oil or to any characteristic of such oil other than that referred to in the preceding sentence.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6394 of this title.

PART E—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

CODIFICATION

This part was, in the original, designated part G and has been changed to part E for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6323, 6325, 6371j of this title; title 15 section 4507.

§ 6371. Definitions

For the purposes of this part—

(1) The term ''building'' means any structure the construction of which was completed on or before May 1, 1989, which includes a heating or cooling system, or both.

(2) The term ''energy conservation measure'' means an installation or modification of an installation in a building which is primarily intended to maintain or reduce energy consumption and reduce energy costs or allow the use of an alternative energy source, including, but not limited to—

(A) insulation of the building structure and systems within the building;

(B) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications.[1]

(C) automatic energy control systems and load management systems;

(D) equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(E) solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(F) solar water heating systems;

(G) furnace or utility plant and distribution system modifications including—

(i) replacement burners, furnaces, boilers, or any combination thereof, which substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system,

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights, and

(iv) utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources, including coal;

(H) caulking and weatherstripping;

(I) replacement or modification of lighting fixtures which replacement or modification increases the energy efficiency of the lighting system without increasing the overall illumination of a facility (unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary);

(J) energy recovery systems;

(K) cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by a school or hospital and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(L) such other measures as the Secretary identifies by rule for purposes of this part; and

(M) such other measures as a grant applicant shows will save a substantial amount of energy and as are identified in an energy audit prescribed pursuant to section 6325(e)(2) of this title.

(3) The term ''hospital'' means a public or nonprofit institution which is—

(A) a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and

(B) duly authorized to provide hospital services under the laws of the State in which it is situated.

(4) The term ''hospital facilities'' means buildings housing a hospital and related facilities, in-

[1] So in original. The period probably should be a semicolon.

cluding laboratories, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

(5) The term ''public or nonprofit institution'' means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) of title 26.

(6) The term ''school'' means a public or nonprofit institution which—

(A) provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(B)(i) provides, and is legally authorized to provide a program of education beyond secondary education, on a day or residential basis;

(ii) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(iii) is accredited by a nationally recognized accrediting agency or association; and

(iv) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the requirements of clauses (i), (ii), and (iii) and which provides such a program;

(C) provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (i), (ii), and (iii) of subparagraph (B); or

(D) is a local educational agency.

(7) The term ''local education agency'' means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

(8) The term ''school facilities'' means buildings housing classrooms, laboratories, dormitories, administrative facilities, athletic facilities, or related facilities operated in connection with a school.

(9) The term ''State'' means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(10) The term ''State energy agency'' means the State agency responsible for developing State energy conservation plans pursuant to section 6322 of this title, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit a State plan under section 6371c of this title.

(11) The term ''State school facilities agency'' means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons, in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this paragraph.

(12) The term ''State hospital facilities agency'' means an existing agency which is broadly representative of the public hospitals and the nonprofit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this paragraph.

(13) The term ''energy audit'' means a determination of the energy consumption characteristics of a building which—

(A) identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

(B) determines appropriate energy conservation maintenance and operating procedures; and

(C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

(14) The term ''preliminary energy audit'' means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption and major energy-using systems of such building.

(15) The term ''energy conservation project'' means—

(A) an undertaking to acquire and to install one or more energy conservation measures in school or hospital facilities and

(B) technical assistance in connection with any such undertaking and technical assistance as described in paragraph (17)(A).

(16) The term ''energy conservation project costs'' includes only costs incurred in the design, acquisition, construction, and installation of energy conservation measures and technical assistance costs.

(17) The term ''technical assistance'' means assistance, under rules promulgated by the Secretary, to States, schools, and hospitals—

(A) to conduct specialized studies identifying and specifying energy savings or energy cost savings that are likely to be realized as a result of (i) modification of maintenance and operating procedures in a building, or (ii) the acquisition and installation of one or more specified energy conservation measures in such building, or (iii) both, and

(B) the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in such building.

(18) The term ''technical assistance costs'' means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel (or both such types of personnel) necessary for providing technical assistance.

(19) The term ''energy conservation maintenance and operating procedure'' means modification or modifications in the maintenance

and operations of a building, and any installations therein, which are designed to reduce energy consumption in such building and which require no significant expenditure of funds.

(20) The term ''Secretary'' means the Secretary of Energy or his designee.

(21) The term ''Governor'' means the chief executive officer of a State or his designee.

(Pub. L. 94–163, title III, § 391, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3239; amended Pub. L. 98–454, title VI, § 601(e), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–440, § 6(b), Oct. 18, 1990, 104 Stat. 1011.)

AMENDMENTS

1990—Par. (1). Pub. L. 101–440, § 6(b)(1), substituted ''May 1, 1989'' for ''April 20, 1977''.

Par. (2). Pub. L. 101–440, § 6(b)(2), (3), in introductory provision substituted ''maintain or reduce energy consumption and reduce energy costs'' for ''reduce energy consumption'' and in subpar. (C) inserted ''and load management systems'' after ''systems''.

Par. (8). Pub. L. 101–440, § 6(b)(4), inserted ''administrative facilities,'' after ''dormitories,''.

Par. (17)(A). Pub. L. 101–440, § 6(b)(5), substituted ''or energy cost savings'' for ''and related cost savings''.

1986—Par. (5)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1984—Par. (9). Pub. L. 98–454 which directed the amendment of subsec. (a) by inserting reference to the Northern Mariana Islands was executed to par. (9) of this section to reflect the probable intent of Congress, because this section does not contain a subsec. (a).

SEPARABILITY

Section 302(c) of title III of Pub. L. 95–619 provided that: ''If any provision of this title [enacting sections 6371 to 6371j and section 6372 to 6372i of this title, amending sections 300k–2 and 300n–1 of this title, and enacting provisions set out as notes under this section and section 6372 of this title] or the application thereof to any person or circumstances be held invalid, the provisions of other sections of this title and their application to other persons or circumstances shall not be affected thereby.''

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 301 of part 1 of title III of Pub. L. 95–619 provided:

''(a) FINDINGS.—The Congress finds that—

''(1) the Nation's nonrenewable energy resources are being rapidly depleted;

''(2) schools and hospitals are major consumers of energy, and have been especially burdened by rising energy prices and fuel shortages;

''(3) substantial energy conservation can be achieved in schools and hospitals through the implementation of energy conservation maintenance and operating procedures and the installation of energy conservation measures; and

''(4) public and nonprofit schools and hospitals in many instances need financial assistance in order to make the necessary improvements to achieve energy conservation.

''(b) PURPOSE.—It is the purpose of this part [enacting sections 6371 to 6371i of this title, amending sections 300k–2 and 300n–1 of this title, and enacting provisions set out as notes under this section] to authorize grants to States and to public and nonprofit schools and hospitals to assist them in identifying and implementing energy conservation maintenance and operating procedures and in evaluating, acquiring, and installing energy conservation measures to reduce the energy use and anticipated energy costs of schools and hospitals.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372 of this title.

§ 6371a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than 60 days after November 9, 1978—

(1) prescribe guidelines for the conduct of preliminary energy audits, including a description of the type, number, and distribution of preliminary energy audits of school and hospital facilities that will provide a reasonably accurate evaluation of the energy conservation needs of all such facilities in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) State plans for implementation of energy conservation projects in schools and hospitals

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of energy conservation projects in schools and hospitals. The guidelines shall include—

(1) a description of the factors which the State energy agency may consider in determining which energy conservation projects will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals,

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to implement energy conservation projects, and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this section may be revised from time to time after notice and opportunity for comment.

(d) Determination of severe hardship class for schools and hospitals

The Secretary shall, by rule prescribe criteria for determining schools and hospitals which are in a class of severe hardship. Such criteria shall take into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of the costs, and such other factors that he deems appropriate.

(Pub. L. 94–163, title III, § 392, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371b, 6371c, 6371e, of this title.

§ 6371b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of guidelines under section 6371a(a) of this title for grants to conduct preliminary energy audits and energy au-

dits of school facilities and hospital facilities in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting preliminary energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(1) of this title. If a State does not conduct preliminary energy audits within two years after November 9, 1978, the Secretary may conduct such audits within such State.

(c) Grants for conduct of energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(2) of this title.

(d) Audits conducted prior to grant of financial assistance

If a State without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary the funds allocated for purposes of this section shall be added to the funds available for energy conservation projects for such State and shall be in addition to amounts otherwise available for such purposes.

(e) Restriction on use of funds; grant covering total cost of energy audits

(1) Except as provided in paragraph (2), amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or any energy audit.

(2) Upon the request of the Governor, the Secretary may make grants to a State for up to 100 percent of the costs of any preliminary energy audits and energy audits, subject to the requirements of section 6371g(a)(3) of this title.

(Pub. L. 94–163, title III, § 393, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371c, 6371f, 6371g of this title.

§ 6371c. State plans

(a) Invitation to State energy agency to submit plan; contents

The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 6371a of this title, or such longer period as the Secretary may, for good cause, allow, a State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed under section 6371a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures and installation of energy conservation measures in the schools and hospitals in such State,

(2) a recommendation as to the types of energy conservation projects considered appropriate for schools and hospitals in such State, together with an estimate of the costs of carrying out such projects in each year for which funds are appropriated.[1]

(3) a program for identifying persons qualified to carry out energy conservation projects,

(4) procedures to insure that funds will be allocated among eligible applicants for energy conservation projects within such State, including procedures—

(A) to insure that funds will be allocated on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, and

(B) to insure that equitable consideration is given to all eligible public or nonprofit institutions regardless of size and type of ownership;[1]

(5) a statement of the extent to which, and by which methods, such State will encourage utilization of solar space heating, cooling, and electric systems and solar water heating systems where appropriate,

(6) procedures to assure that all assistance under this part in such State will be expended in compliance with the requirements of an approved State plan for such State, and in compliance with the requirements of this part:[1]

(7) procedures to insure implementation of energy conserving maintenance and operating procedures in those facilities for which projects are proposed;[1] and

(8) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant, State, local, or other funds.

(b) Approval of plans

The Secretary shall review and approve or disapprove each State plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90-day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

(c) Development and implementation of approved plans; submission of proposed State plan

(1) If a State plan has not been approved under this section within 2 years and 90 days after November 9, 1978, or within 90 days after the completion of the preliminary audits under section 6371b(a) of this title, whichever is later, the Sec-

[1] So in original. The punctuation probably should be a comma.

retary may take such action as necessary to develop and implement such a State plan and to carry out the functions which would otherwise be carried out under this part by the State energy agency, State school facilities agency, and State hospital facilities agency, in order that the energy conservation program for schools and hospitals may be implemented in such State.

(2) Notwithstanding any other provision contained in this section, a State may, at any time, submit a proposed State plan for such State under this section. The Secretary shall approve or disapprove such plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section and is not inconsistent with any plan developed and implemented by the Secretary under paragraph (1), the Secretary shall approve the plan and withdraw any such plan developed and implemented by the Secretary.

(Pub. L. 94–163, title III, § 394, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3243.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371, 6371d, 6371e of this title.

§ 6371d. Applications for financial assistance

(a) Limitation on number of applications by States, schools, and hospitals; submittal to State energy agency

Applications of States, schools, and hospitals for financial assistance under this part for energy conservation projects shall be made not more than once for any fiscal year. Schools and hospitals applying for such financial assistance shall submit their applications to the State energy agency and the State energy agency shall make a single submittal to the Secretary, containing all applications which comply with the State plan.

(b) Required information

Applications for financial assistance under this part for energy conservation projects shall contain, or shall be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this section shall include a listing and description of energy conservation projects proposed to be funded within the State during the fiscal year for which such application is made, and such information concerning expected expenditures as the Secretary may, by rule, require.

(c) Conditions for financial assistance; applications consistent with related State programs and health plans

(1) The Secretary may not provide financial assistance to States, schools, or hospitals for energy conservation projects unless the application for a grant for such project is submitted through, or approved by the appropriate State hospital facilities agency or State school facilities agency, respectively, and determined by the State energy agency to comply with the State plan.

(2) Applications of States, schools, and hospitals and State plans pursuant to this part shall be consistent with—

(A) related State programs for educational facilities in such State, and

(B) State health plans under section 300m–3(c)(2)[1] and 300*o*–2[1] of this title, and shall be coordinated through the review mechanisms required under section 300m–2[1] of this title and section 1320a–1 of this title.

(d) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and with the requirements of the applicable State plan approved under section 6371c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application. All or any portion of an application under this section may be disapproved to the extent that funds are not available under this part to carry out such application or portion.

(e) Suspension of further assistance for failure to comply

Whenever the Secretary, after reasonable notice and opportunity for hearing to any State, school, or hospital receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the State, school, or hospital that further assistance will not be made available to such State, school or hospital under this part until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied no further assistance shall be made to such State, school, or hospital under this part.

(Pub. L. 94–163, title III, § 395, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3244.)

REFERENCES IN TEXT

Sections 300m–2 and 300m–3 of this title, referred to in subsec. (c)(2)(B), were repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300*o*–2 of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6371e of this title.

[1] See References in Text note below.

§ 6371e. Grants for project costs and technical assistance

(a) Authorization of Secretary; project costs

The Secretary may make grants to schools and hospitals for carrying out energy conservation projects the applications for which have been approved under section 6371d of this title.

(b) Restrictions on use of funds

(1) Except as provided in paragraph (2), amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of the costs of any energy conservation project. The non-Federal share of the costs of any such energy conservation project may be provided by using programs of innovative financing for energy conservation projects (including, but not limited to, loan programs and performance contracting), even if, pursuant to such financing, clear title to the equipment does not pass to the school or hospital until after the grant is completed.

(2) Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may be used to pay not to exceed 90 percent of the costs of an energy conservation project if the Secretary determines that a project meets the hardship criteria of section 6371a(d) of this title. Grants made under this paragraph shall be from the funds provided under section 6371g(a)(2) of this title.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6371g of this title.

(d) Technical assistance costs

(1) The Secretary may make grants to States for paying technical assistance costs. Schools in any State shall not be allocated less than 30 percent of the funds for energy conservation projects within such State and hospitals in any State shall not be allocated less than 30 percent of such funds.

(2) A State may utilize up to 100 percent of the funds provided by the Secretary under this part for any fiscal year for program and technical assistance and up to 50 percent of such funds for marketing and other costs associated with leveraging of non-Federal funds for carrying out this part and may administer a continuous and consecutive application and award procedure for providing program and technical assistance under this part in accordance with regulations that the Secretary shall establish, if the State—

(A) has adopted a State plan in accordance with section 6371c of this title, the administration of which is in accordance with applicable regulations; and

(B) certifies to the Secretary that not more than 15 percent of the aggregate amount of Federal and non-Federal funds used by the State to provide program and technical assistance, implement energy conservation measures, and otherwise carry out a program pursuant to this part for the fiscal year concerned will be expended for program and technical assistance and for marketing and other costs associated with leveraging of non-Federal funds for such program.

(Pub. L. 94–163, title III, § 396, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3245; amended Pub. L. 101–440, § 6(a), (c), (d), Oct. 18, 1990, 104 Stat. 1011.)

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–440, § 6(a), inserted at end ''The non-Federal share of the costs of any such energy conservation project may be provided by using programs of innovative financing for energy conservation projects (including, but not limited to, loan programs and performance contracting), even if, pursuant to such financing, clear title to the equipment does not pass to the school or hospital until after the grant is completed.''

Subsec. (d). Pub. L. 101–440, § 6(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 101–440, § 6(c), struck out subsec. (e) which prohibited funds for buildings used principally for administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371f, 6371g of this title.

§ 6371f. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated not to exceed $40,000,000 for fiscal year 1991, $50,000,000 for fiscal year 1992, and $60,000,000 for fiscal year 1993.

(Pub. L. 94–163, title III, § 397, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3246; amended Pub. L. 101–440, § 8(b), Oct. 18, 1990, 104 Stat. 1015.)

AMENDMENTS

1990—Pub. L. 101–440 amended section generally, substituting provisions authorizing appropriations for fiscal years 1991 through 1993 for provisions authorizing appropriations for fiscal years ending Sept. 30, 1978, Sept. 30, 1979, and Sept. 30, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6371g of this title.

§ 6371g. Allocation of grants

(a) Section 6371e grants

(1) Except as otherwise provided in subsection (b) of this section, the Secretary shall allocate 90 percent of the amounts made available under section 6371f(b) of this title in any year for purposes of making energy conservation project grants pursuant to section 6371e of this title as follows:

(A) Eighty percent of amounts made available under section 6371f(b) of this title shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(B) Ten percent of amounts made available under section 6371f(b) of this title shall be allocated among the States in such manner as the Secretary determines by rule after taking into account the availability and cost of fuel or

other energy used in, and the amount of fuel or other energy consumed by, schools and hospitals in the States, and such other factors as he deems appropriate.

(2) The Secretary shall allocate 10 percent of the amounts made available under section 6371f(b) of this title in any year for purposes of making grants as provided under section 6371e(b)(2) of this title in excess of the 50 percent limitation contained in section 6371e(b)(1) of this title.

(3) In the case of any State which received for any fiscal year an amount which exceeded 50 percent of the cost of any energy audit as provided in section 6371b(e)(2) of this title, the aggregate amount allocated to such State under this subsection for such fiscal year (determined after applying paragraphs (1) and (2)) shall be reduced by an amount equal to such excess. The amount of such reduction shall be reallocated to the States for such fiscal year as provided in this subsection except that for purposes of such reallocation, the State which received such excess shall not be eligible for any portion of such reallocation.

(b) Restrictions on allocations to States

The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants to States and to schools and hospitals in each State which has an approved State plan under this part.

(c) Prescription of rules governing allocations among States with regard to energy audits

Not later than 60 days after November 9, 1978, the Secretary shall prescribe rules governing the allocation among the States of funds for grants for preliminary energy audits and energy audits. Such rules shall take into account the population and climate of such States and such other factors as he may deem appropriate.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(e) Reallocations

Funds allocated for projects in any States for a fiscal year under this section but not obligated in such fiscal year shall be available for reallocation under subsection (a) of this section in the subsequent fiscal year.

(Pub. L. 94–163, title III, § 398, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3246; amended Pub. L. 98–454, title VI, § 601(e), Oct. 5, 1984, 98 Stat. 1736.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–454 inserted reference to Northern Mariana Islands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371c, 6371e of this title.

§ 6371h. Administration; detailed description in annual report

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.

(Pub. L. 94–163, title III, § 399, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3247; amended Pub. L. 96–470, title II, § 203(b), Oct. 19, 1980, 94 Stat. 2242.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–470 substituted ''include in his annual report a detailed description'' for '', within one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to Congress a detailed report'' and ''Such description'' for ''Such report''.

§ 6371i. Records

(a)[1] Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94–163, title III, § 400, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3247.)

§ 6371j. Application of Davis-Bacon Act

No grant for a project (other than so much of a grant as is used for a preliminary energy audit, energy audit, or technical assistance or a grant the total project cost of which is $5,000 or less, excluding costs for a preliminary energy audit, energy audit, or technical assistance) shall be made under this part or part 1 unless the Secretary finds that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction utilizing such grants will be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Act of March 31, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 276c of title 40.

(Pub. L. 95–619, title III, § 312, Nov. 9, 1978, 92 Stat. 3254.)

REFERENCES IN TEXT

This part, referred to in text, means part 2 (§§ 310–312) of title III of Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3248,

[1] So in original. No subsec. (b) has been enacted.

as amended, which enacted sections 6371j and 6372 to 6372i of this title and enacted provisions set out as a note under section 6372 of this title. For complete classification of this part to the Code, see Tables.

Part 1, referred to in text, means part 1 (§§ 301–304) of title III of Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3238, as amended, which enacted sections 6371 to 6371i of this title, amended sections 300k–2 and 300n–1 of this title, and enacted provisions set out as notes under sections 6371 of this title. For complete classification of this part to the Code, see Tables.

Act of March 31, 1931, referred to in text, is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as a part of the National Energy Conservation Policy Act, and not as a part of the Energy Policy and Conservation Act which comprises this chapter, and consequently is not a part of part E of this subchapter.

PART F—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

CODIFICATION

This part was, in the original, designated part H and has been changed to part F for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6371j of this title.

§ 6372. Definitions

For purposes of this part—

(1) The terms ''hospital'', ''State'', ''school'', ''Governor'', ''State energy agency'', ''energy conservation measure'', ''energy conservation maintenance and operating procedure'', ''preliminary energy audit'', ''technical assistance costs'', ''energy audit'' and ''Secretary'' have the meanings provided in section 6371 of this title.

(2) The term ''unit of local government'' means the government of a county, municipality, or township, which is a unit of general purpose government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe (as defined in section 6862 of this title) which governing body performs substantial governmental functions.

(3) The term ''building'' has the meaning provided in section 6371 of this title except that for purposes of this part such term includes only buildings which are owned and primarily occupied by offices or agencies of a unit of local government or by a public care institution and does not include any building intended for seasonal use or any building utilized primarily by a school or hospital.

(4) The term ''public care institution'' means a public or nonprofit institution which owns—

(A) a facility for long term care, a rehabilitation facility, or a public health center, as described in section 300s–3 of this title, or

(B) a residential child care center.

(5) The term ''public or nonprofit institution'' means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) or 501(c)(4) of title 26.

(6) The term ''technical assistance program costs'' means the costs of carrying out a technical assistance program.

(7) The term ''technical assistance'' means assistance under rules, promulgated by the Secretary, to States, units of local government and public care institutions—

(A) to conduct specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of (i) modification or maintenance and operating procedures in a building, (ii) the acquisition and installation of one or more specified energy conservation measures in such building or (iii) both, or

(B) the planning or administration of such specialized studies.

(Pub. L. 94–163, title III, § 400A, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3248; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Par. (5)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

SEPARABILITY

For separability of provisions of title III of Pub. L. 95–619, see section 302(c) of Pub. L. 95–619, set out as a note under section 6371 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 310 of part 2 of title III of Pub. L. 95–619 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the Nation's nonrenewable energy resources are being rapidly depleted;

''(2) buildings owned by units of local government and public care institutions are major consumers of energy, and such units and institutions have been especially burdened by rising energy prices and fuel shortages;

''(3) substantial energy conservation can be achieved in buildings owned by units of local government and public care institutions through the implementation of energy conservation maintenance and operating procedures; and

''(4) units of local government and public care institutions in many instances need financial assistance in order to conduct energy audits and to identify energy conservation maintenance and operating procedures and to evaluate the potential benefits of acquiring and installing energy conservation measures.

''(b) PURPOSE.—It is the purpose of this part [enacting sections 6371j and 6372 to 6372i of this title] to authorize grants to States and units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits in identifying and implementing energy conservation maintenance and operating procedures and in evaluating energy conservation measures to reduce the energy use

and anticipated energy costs of buildings owned by units of local government and public care institutions.''

APPLICATION OF DAVIS-BACON ACT

For application of the Davis-Bacon Act to grants made by the Secretary under this part, see section 6371j of this title.

§ 6372a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than sixty days after November 9, 1978—

(1) prescribe guidelines for the conduct of the preliminary energy audits for buildings owned by units of local government and public care institutions, including a description of the type, number and distribution of preliminary energy audits of such buildings that will provide a reasonably accurate evaluation of the energy conservation needs of all such buildings in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) Implementation of technical assistance programs

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of technical assistance programs for buildings owned by units of local government and public care institutions. The guidelines shall include—

(1) a description of the factors to be considered in determining which technical assistance programs will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals;

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to undertake technical assistance work; and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this part may be revised from time to time after notice and opportunity for comment.

(Pub. L. 94–163, title III, § 400B, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3249.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6372b, 6372c of this title.

§ 6372b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct preliminary energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section, the Secretary may make grants to States to assist in conducting preliminary energy audits under this part for buildings owned by units of local government and public care institutions. Such audits shall be conducted in accordance with the guidelines prescribed under section 6372a(a)(1) of this title.

(c) Application by Governor, unit of local government or public care institution

The Governor of any State, unit of local government or public care institution may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(d) Grants for conduct of energy audits

Upon application under subsection (c) of this section the Secretary may make grants to States, units of local government, and public care institutions for purposes of conducting energy audits of facilities under this part in accordance with the guidelines prescribed under section 6372a(a)(2) of this title.

(e) Audits conducted prior to grant of financial assistance

If a State, unit of local government, or public care institution, without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary, the funds allocated for purposes of this section shall be added to the funds available for technical assistance programs for such State, and shall be in addition to amounts otherwise available for such purpose.

(f) Restriction on use of funds

Amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or energy audit.

(Pub. L. 94–163, title III, § 400C, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3250.)

§ 6372c. State plans

(a) The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 6372a of this title, or such longer period as the Secretary may, for good cause, allow, a proposed State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed pursuant to section 6372a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures in buildings owned by units of local government and public care institutions,[1]

(2) a recommendation as to the types of technical assistance programs considered ap-

[1] So in original. The comma probably should be a semicolon.

propriate for buildings owned by units of local government and public care institutions in such State, together with an estimate of the costs of carrying out such programs;

(3) a program for identifying persons qualified to carry out technical assistance programs,[1]

(4) procedures for the coordination among technical assistance programs within any State and for coordination of programs authorized under this part with other State energy conservation programs,[1]

(5) a description of the policies and procedures to be followed in the allocation of funds among eligible applicants for technical assistance within such State, including procedures to insure that funds will be allocated among eligible applicants on the basis of relative need and including recommendations as to how priorities should be established between buildings owned by units of local government and public care institutions, and among competing proposals taking into account such factors as cost, energy consumption, and energy savings;

(6) procedures to assure that all grants for technical assistance provided under this part are expended in compliance with the requirements of an approved State plan for such State and in compliance with the requirements of this part (including requirements contained in rules promulgated under this part); and

(7) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant State, local, or other funds.

(b) Each State plan submitted under this section shall be reviewed and approved or disapproved by the Secretary not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90 day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

(Pub. L. 94–163, title III, § 400D, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3251.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372d of this title.

§ 6372d. Applications for grants for technical assistance

(a) Limitation on number of applications by units of local government and public care institutions; submittal to State energy agency

Applications of units of local government and public care institutions for grants for technical assistance under this part shall be made not more than once for any fiscal year. Such applications shall be submitted to the State energy agency and the State energy agency shall make a single submittal to the Secretary containing all applications which comply with the State plan.

(b) Required information

Applications for grants for technical assistance under this part shall contain or be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this section shall include a listing and description of technical assistance proposed to be funded under this part within the State during the fiscal year for which such application is made, and such information concerning expenditures as the Secretary may, by rule, require.

(c) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and the requirements of the applicable State plan approved under section 6372c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide be subject to approval in the same manner as the original application. All or any portions of an application under this section may be disapproved to the extent that funds are not available under this part.

(d) Suspension of further assistance for failure to comply

Whenever the Secretary after reasonable notice and opportunity for hearing to any unit of local government or public care institution receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the unit of local government or public care institution that further assistance will not be made available to such unit of local government or public care institution under this part until he is satisfied that there is no longer any failure to comply. Until he is so satisfied, no further assistance shall be made to such unit of local government or public care institution under this part.

(Pub. L. 94–163, title III, § 400E, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372e of this title.

§ 6372e. Grants for technical assistance

(a) Authorization of Secretary

The Secretary may make grants to States and to units of local government and public care institutions in payment of technical assistance program costs for buildings owned by units of local government and public care institutions the applications for which have been approved under section 6372d of this title.

(b) Restriction on use of funds

Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of technical assistance program costs.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6372g of this title.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(Pub. L. 94–163, title III, § 400F, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3252.)

§ 6372f. Authorization of appropriations

(a) For the purpose of making grants to States to conduct preliminary energy audits and energy audits under this part there is authorized to be appropriated not to exceed $7,500,000 for the fiscal year ending September 30, 1978, and $7,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(b) For the purpose of making technical assistance grants under this part to States and to units of local government and public care institutions, there is hereby authorized to be appropriated not to exceed $17,500,000 for the fiscal year ending September 30, 1978, and $32,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(c) For the expenses of the Secretary in administering the provisions of this part, there are hereby authorized to be appropriated such sums as may be necessary for each fiscal year in the two consecutive fiscal year periods ending September 30, 1979, such funds to remain available until expended.

(Pub. L. 94–163, title III, § 400G, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

§ 6372g. Allocation of grants

(a) Grants made under this part shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(b) The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants in each State which has an approved State plan under this part.

(Pub. L. 94–163, title III, § 400H, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372e of this title.

§ 6372h. Administration; detailed description in annual report

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall,[1] include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out with funds allocated, and an estimate of the energy savings, if any, achieved.

(Pub. L. 94–163, title III, § 400I, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253; amended Pub. L. 96–470, title II, § 203(a), Oct. 19, 1980, 94 Stat. 2242.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–470 substituted ''include in his annual report a detailed description'' for ''within one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to the Congress a detailed report'' and ''Such description'' for ''Such report''.

§ 6372i. Records

Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94–163, title III, § 400J, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

PART G—OFF-HIGHWAY MOTOR VEHICLES

CODIFICATION

This part was, in the original, designated part I and has been changed to part G for purposes of codification.

§ 6373. Off-highway motor vehicles

Not later than 1 year after November 9, 1978, the Secretary of Transportation shall complete a study of the energy conservation potential of recreational motor vehicles, including, but not limited to, aircraft and motor boats which are designed for recreational use, and shall submit a

[1] So in original. The comma probably should not appear.

report to the President and to the Congress containing the results of such study.

(Pub. L. 94–163, title III, § 385, as added Pub. L. 95–619, title VI, § 681(a), Nov. 9, 1978, 92 Stat. 3286.)

PART H—ENCOURAGING USE OF ALTERNATIVE FUELS

CODIFICATION

This part was, in the original, designated part J and has been changed to part H for purposes of codification.

§ 6374. Alternative fuel use by light duty Federal vehicles

(a) Department of Energy program

(1) Beginning in the fiscal year ending September 30, 1990, the Secretary shall ensure, with the cooperation of other appropriate agencies and consistent with other Federal law, that the maximum number practicable of the vehicles acquired annually for use by the Federal Government shall be alternative fueled vehicles. In no event shall the number of such vehicles acquired be less than the number required under section 13212 of this title.

(2) In any determination of whether the acquisition of a vehicle is practicable under paragraph (1), the initial cost of such vehicle to the United States shall not be considered as a factor unless the initial cost of such vehicle exceeds the initial cost of a comparable gasoline or diesel fueled vehicle by at least 5 percent.

(3)(A) To the extent practicable, the Secretary shall acquire both dedicated and dual fueled vehicles, and shall ensure that each type of alternative fueled vehicle is used by the Federal Government.

(B) Vehicles acquired under this section shall be acquired from original equipment manufacturers. If such vehicles are not available from original equipment manufacturers, vehicles converted to use alternative fuels may be acquired if, after conversion, the original equipment manufacturer's warranty continues to apply to such vehicles, pursuant to an agreement between the original equipment manufacturer and the person performing the conversion. This subparagraph shall not apply to vehicles acquired by the United States Postal Service pursuant to a contract entered into by the United States Postal Service before October 24, 1992, and which terminates on or before December 31, 1997.

(C) Alternative fueled vehicles, other than those described in subparagraph (B), may be acquired solely for the purposes of studies under subsection (b) of this section, whether or not original equipment manufacturer warranties still apply.

(D) In deciding which types of alternative fueled vehicles to acquire in implementing this part, the Secretary shall consider as a factor—

(i) which types of vehicles yield the greatest reduction in pollutants emitted per dollar spent; and

(ii) the source of the fuel to supply the vehicles, giving preference to vehicles that operate on alternative fuels derived from domestic sources.

(E) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that operation on such alternative fuels is not feasible.

(F) At least 50 percent of the alternative fuels used in vehicles acquired pursuant to this section shall be derived from domestic feedstocks, except to the extent inconsistent with the General Agreement on Tariffs and Trade. The Secretary shall issue regulations to implement this requirement. For purposes of this subparagraph, the term ''domestic'' has the meaning given such term in section 13211(7) of this title.

(G) Except to the extent inconsistent with the General Agreement on Tariffs and Trade, vehicles acquired under this section shall be motor vehicles manufactured in the United States or Canada.

(4) Acquisitions of vehicles under this section shall, to the extent practicable, be coordinated with acquisitions of alternative fueled vehicles by State and local governments.

(b) Studies

(1)(A) The Secretary, in cooperation with the Environmental Protection Agency and the National Highway Traffic Safety Administration, shall conduct a study of a representative sample of alternative fueled vehicles in Federal fleets, which shall at a minimum address—

(i) the performance of such vehicles, including performance in cold weather and at high altitude;

(ii) the fuel economy, safety, and emissions of such vehicles; and

(iii) a comparison of the operation and maintenance costs of such vehicles to the operation and maintenance costs of other passenger automobiles and light duty trucks.

(B) The Secretary shall provide a report on the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, within one year after the first such vehicles are acquired, and annually thereafter.

(2)(A) The Secretary and the Administrator of the General Services Administration shall conduct a study of the advisability, feasibility, and timing of the disposal of vehicles acquired under subsection (a) of this section and any problems of such disposal. Such study shall take into account existing laws governing the sale of Government vehicles and shall specifically focus on when to sell such vehicles and what price to charge, without compromising studies of the use of such vehicles authorized under this part.

(B) The Secretary and the Administrator of the General Services Administration shall report the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, within 12 months after funds are appropriated for carrying out this section.

(3)(A) The Secretary, in cooperation with the Environmental Protection Agency and the Department of Transportation, shall collect data and conduct a study of heavy duty vehicles acquired under subsection (a) of this section, which shall at a minimum address—

(i) the performance of such vehicles, including reliability, durability, and performance in cold weather and at high altitude;

(ii) the fuel economy, safety, and emissions of such vehicles; and

(iii) a comparison of the operation and maintenance costs of such vehicles to the operation and maintenance costs of conventionally fueled heavy duty vehicles.

(B) The Secretary shall provide a report on the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation, Governmental Affairs, and Energy and Natural Resources of the Senate, and the Committees on Energy and Commerce and Government Operations of the House of Representatives, within one year after the first such vehicles are acquired, and annually thereafter.

(4)(A) The Secretary and the Administrator of the General Services Administration shall conduct a study of the advisability, feasibility, and timing of the disposal of heavy duty vehicles acquired under subsection (a) of this section and any problems with such disposal. Such study shall take into account existing laws governing the sale of Government vehicles and shall specifically focus on when to sell such vehicles and what price to charge.

(B) The Secretary and the Administrator of the General Services Administration shall report the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation, Governmental Affairs, and Energy and Natural Resources of the Senate, and the Committee on Energy and Commerce and the Committee on Government Operations of the House of Representatives, within one year after funds are appropriated for carrying out this paragraph.

(5) Studies undertaken under this subsection shall be coordinated with relevant testing activities of the Environmental Protection Agency and the Department of Transportation.

(c) Availability to public

To the extent practicable, at locations where vehicles acquired under subsection (a) of this section are supplied with alternative fuels, such fuels shall be offered for sale to the public. The head of the Federal agency responsible for such a location shall consider whether such sale is practicable, taking into account, among other factors—

(1) whether alternative fuel is commercially available for vehicles in the vicinity of such location;

(2) security and safety considerations;

(3) whether such sale is in accordance with applicable local, State, and Federal law;

(4) the ease with which the public can access such location; and

(5) the cost to the United States of such sale.

(d) Federal agency use of demonstration vehicles

(1) Upon the request of the head of any agency of the Federal Government, the Secretary shall ensure that such Federal agency be provided with vehicles acquired under subsection (a) of this section to the maximum extent practicable.

(2)(A) Funds appropriated under this section for the acquisition of vehicles under subsection (a) of this section shall be applicable only to the portion of the cost of vehicles acquired under subsection (a) of this section which exceeds the cost of comparable gasoline or diesel fueled vehicles.

(B) To the extent that appropriations are available for such purposes, the Secretary shall ensure that the cost to any Federal agency receiving a vehicle under paragraph (1) shall not exceed the cost to such agency of a comparable gasoline or diesel fueled vehicle.

(3) Only one-half of the vehicles acquired under this section by an agency of the Federal Government shall be counted against any limitation under law, Executive order, or executive or agency policy on the number of vehicles which may be acquired by such agency.

(4) Any Federal agency receiving a vehicle under paragraph (1) shall cooperate with studies undertaken by the Secretary under subsection (b) of this section.

(e) Detail of personnel

Upon the request of the Secretary, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Department of Energy to assist the Secretary in carrying out the Secretary's duties under this section.

(f) Exemptions

(1) Vehicles acquired under this section shall not be counted in any calculation of the average fuel economy of the fleet of passenger automobiles acquired in a fiscal year by the United States.

(2) The incremental cost of vehicles acquired under this section over the cost of comparable gasoline or diesel fueled vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be acquired by the United States.

(g) Definitions

For purposes of this part—

(1) the term ''acquired'' means leased for a period of sixty continuous days or more, or purchased;

(2) the term ''alternative fuel'' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits;

(3) the term ''alternative fueled vehicle'' means a dedicated vehicle or a dual fueled vehicle;

(4) the term ''dedicated vehicle'' means—

(A) a dedicated automobile, as such term is defined in section 32901(a)(7) of title 49; or

(B) a motor vehicle, other than an automobile, that operates solely on alternative fuel;

(5) the term ''dual fueled vehicle'' means—

(A) dual fueled automobile, as such term is defined in section 32901(a)(8) of title 49; or

(B) a motor vehicle, other than an automobile, that is capable of operating on alternative fuel and is capable of operating on gasoline or diesel fuel; and

(6) the term ''heavy duty vehicle'' means a vehicle of greater than 8,500 pounds gross vehicle weight rating.

(i)[1] Funding

(1) For the purposes of this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 94–163, title III, § 400AA, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2442; amended Pub. L. 102–486, title III, §§ 302(a), 309, Oct. 24, 1992, 106 Stat. 2868, 2874.)

CODIFICATION

In subsec. (g)(4)(A), (5)(A), ''section 32901(a)(7) of title 49'' substituted for ''section 513(h)(1)(C) of the Motor Vehicle Information Cost Savings Act'' and ''section 32901(a)(8) of title 49'' substituted for ''section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act'', respectively, on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–486, § 302(a)(1), substituted ''vehicles'' for ''passenger automobiles and light duty trucks'' before ''acquired annually for use'' and ''alternative fueled vehicles. In no event shall the number of such vehicles acquired be less than the number required under section 13212 of this title.'' for ''alcohol powered vehicles, dual energy vehicles, natural gas powered vehicles, or natural gas dual energy vehicles.''

Subsec. (a)(3). Pub. L. 102–486, § 302(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary shall, to the extent practicable and consistent with this part, ensure that the number of dual energy vehicles acquired under this subsection is at least as great as the number of alcohol powered vehicles acquired under this subsection, and that the number of natural gas dual energy vehicles acquired under this subsection is at least as great as the number of natural gas powered vehicles acquired under this subsection. To the extent practicable, both vehicles capable of operating on alcohol and vehicles capable of operating on natural gas shall be acquired in carrying out this subsection, and such vehicles shall be supplied by original equipment manufacturers.''

Subsec. (a)(4). Pub. L. 102–486, § 302(a)(3), added par. (4).

Subsec. (b)(1)(A). Pub. L. 102–486, § 309, substituted ''a representative sample of alternative fueled vehicles in Federal fleets'' for ''the vehicles acquired under subsection (a) of this section''.

Subsec. (b)(3) to (5). Pub. L. 102–486, § 302(a)(4), added pars. (3) to (5).

Subsec. (c). Pub. L. 102–486, § 302(a)(5), in introductory provisions substituted ''alternative fuels, such fuels'' for ''alcohol or natural gas, alcohol or natural gas'' and in par. (1) substituted ''alternative fuel'' for ''alcohol or natural gas''.

Subsec. (d)(2)(B). Pub. L. 102–486, § 302(a)(6), substituted ''To the extent that appropriations are available for such purposes, the Secretary'' for ''The Secretary''.

Subsec. (g)(2) to (6). Pub. L. 102–486, § 302(a)(7), added pars. (2) to (6) and struck out former pars. (2) to (6) which read as follows:

''(2) the term 'alcohol' means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination;

''(3) the term 'alcohol powered vehicle' means a vehicle designed to operate exclusively on alcohol;

''(4) the term 'dual energy vehicle' means a vehicle which is capable of operating on alcohol and on gasoline or diesel fuel;

''(5) the term 'natural gas dual energy vehicle' means a vehicle which is capable of operating on natural gas and on gasoline or diesel fuel; and

''(6) the term 'natural gas powered vehicle' means a vehicle designed to operate exclusively on natural gas.''

Subsec. (i)(1). Pub. L. 102–486, § 302(a)(8), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of this section, there are authorized to be appropriated for the fiscal year ending September 30, 1990, $5,000,000, for the fiscal year ending September 30, 1991, $3,000,000, for the fiscal year ending September 30, 1992, $2,000,000, and for the fiscal year ending September 30, 1993, $2,000,000.''

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Government Operations of House of Representatives changed to Committee on Government Reform and Oversight of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

TERMINATION DATE

Section 4(b) of Pub. L. 100–494, which provided that this section and the amendments made by this section (enacting this part) were to cease to be effective after Sept. 30, 1997, was repealed by Pub. L. 102–486, title III, § 302(b), Oct. 24, 1992, 106 Stat. 2871.

FINDINGS

Section 2 of Pub. L. 100–494 provided that: ''The Congress finds and declares that—

''(1) the achievement of long-term energy security for the United States is essential to the health of the national economy, the well-being of our citizens, and the maintenance of national security;

''(2) the displacement of energy derived from imported oil with alternative fuels will help to achieve energy security and improve air quality;

''(3) transportation uses account for more than 60 percent of the oil consumption of the Nation;

''(4) the Nation's security, economic, and environmental interests require that the Federal Government should assist clean-burning, nonpetroleum transportation fuels to reach a threshold level of commercial application and consumer acceptability at which they can successfully compete with petroleum-based fuels;

''(5) methanol, ethanol, and natural gas are proven transportation fuels that burn more cleanly and efficiently than gasoline and diesel fuel;

''(6) the production and use as transportation fuels of ethanol, methanol made from natural gas or biomass, and compressed natural gas have been estimated in some studies to release less carbon dioxide than comparable quantities of petroleum-based fuel;

[1] So in original. No subsec. (h) has been enacted.

''(7) the amount of carbon dioxide released with methanol from a coal-to-methanol industry using currently available technologies has been estimated in some studies to be significantly greater than the amount released with a comparable quantity of petroleum-based fuel;

''(8) there exists evidence that manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long term and substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect; and

''(9) ongoing pollution and deforestation may be contributing now to an irreversible process producing unacceptable global climate changes; necessary actions must be identified and implemented in time to protect the climate, including the development of technologies to control increased carbon dioxide emissions that result with methanol from a coal-to-methanol industry.''

PURPOSE

Section 3 of Pub. L. 100–494 provided that: ''The purpose of this Act [see Short Title of 1988 Amendment note set out under section 6201 of this title] is to encourage—

''(1) the development and widespread use of methanol, ethanol, and natural gas as transportation fuels by consumers; and

''(2) the production of methanol, ethanol, and natural gas powered motor vehicles.''

USE OF NONSTANDARD FUELS

Section 5 of Pub. L. 100–494 provided that: ''No guaranty or warranty with respect to any passenger automobile or light-duty truck acquired by the United States after October 1, 1989, shall be voided or reduced in effect by reason of the operation of such vehicle with any fuel for which a currently effective waiver, which includes a limitation regarding Reid vapor pressure with respect to such fuel, has been issued by the Administrator of the Environmental Protection Agency under section 211(f) of the Clean Air Act (42 U.S.C. 7545(f)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13212, 13218 of this title.

§ 6374a. Alternative fuels truck commercial application program

(a) Establishment

The Secretary, in cooperation with manufacturers of heavy duty engines and with other Federal agencies, shall establish a commercial application program to study the use of alternative fuels in heavy duty trucks and, if appropriate, other heavy duty applications.

(b) Funding

(1) There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary for fiscal years 1993 through 1995, to remain available until expended.

(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 94–163, title III, § 400BB, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2444; amended Pub. L. 102–486, title IV, § 401, Oct. 24, 1992, 106 Stat. 2875.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486, § 401(a), substituted ''alternative fuels'' for ''alcohol and natural gas''.

Subsec. (b)(1). Pub. L. 102–486, § 401(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''There are authorized to be appropriated for the period encompassing the fiscal years ending September 30, 1990, September 30, 1991, and September 30, 1992, a total of $2,000,000 for alcohol powered vehicles and dual energy vehicles, and a total of $2,000,000 for natural gas powered vehicles and natural gas dual energy vehicles, to carry out the purposes of this section.''

§ 6374b. Alternative fuels bus program

(a) Testing

The Secretary, in cooperation with the Administrator of the Environmental Protection Agency and the Administrator of the National Highway Traffic Safety Administration, shall, beginning in the fiscal year ending September 30, 1990, assist State and local government agencies in the testing in urban settings of buses capable of operating on alternative fuels for the emissions levels, durability, safety, and fuel economy of such buses, comparing the different types with each other and with diesel powered buses, as such buses will be required to operate under Federal safety and environmental standards applicable to such buses for the model year 1991. To the extent practicable, testing assisted under this section shall apply to each of the various types of alternative fuel buses.

(b) Funding

There are authorized to be appropriated for the period encompassing the fiscal years ending September 30, 1990, September 30, 1991, and September 30, 1992, a total of $2,000,000 to carry out the purposes of this section.

(c) "Bus" defined

For purposes of this section, the term ''bus'' means a vehicle which is designed to transport 30 individuals or more.

(Pub. L. 94–163, title III, § 400CC, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2445; amended Pub. L. 102–486, title IV, § 402(1), Oct. 24, 1992, 106 Stat. 2875.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486 substituted ''alternative fuels'' for ''alcohol and buses capable of operating on natural gas'' and ''each of the various types of alternative fuel buses'' for ''both buses capable of operating on alcohol and buses capable of operating on natural gas''.

§ 6374c. Interagency Commission on Alternative Motor Fuels

(a) Establishment

There is established a Commission to be known as the Interagency Commission on Alternative Motor Fuels.

(b) Membership

The Commission shall be composed of members as follows:

(1) the Secretary of Energy, or the designee of the Secretary, who shall be the chairperson of the Commission;

(2) the Secretary of Defense or the designee of such Secretary;

(3) the Administrator of the Environmental Protection Agency or the designee of such Administrator;

(4) the Secretary of Transportation or the designee of such Secretary;

(5) the Postmaster General or the designee of the Postmaster General;

(6) the Administrator of the General Services Administration or the designee of such Administrator;

(7) the Administrator of the Occupational Safety and Health Administration or the designee of such Administrator; and

(8) such other officers and employees of the Federal Government as may be appointed to the Commission by the President.

(c) Operations

(1) The Commission shall meet regularly as necessary to carry out the purposes of this section. Meetings shall be at the call of the chairperson of the Commission. The Commission shall meet to consider any report of the Commission before such report is submitted to the Congress.

(2) The Secretary shall provide the Commission with such staff and office facilities as the Secretary, following consultation with the Commission, considers necessary to permit the Commission to carry out its functions under this section.

(3) Subject to applicable law, all expenses of the Commission shall be paid from funds available to the Secretary, except that salaries of Commission members shall be paid by their home agencies.

(d) Functions

(1) The Commission shall coordinate Federal agency efforts to develop and implement a national alternative fuels policy.

(2) The Commission shall ensure the development of a long-term plan for the commercialization of alternative fuels.

(3) The Commission shall ensure communication among representatives of all Federal agencies that are involved in alternative fuels projects or that have an interest in such projects.

(4) The Commission shall provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative fuels.

(e) United States Alternative Fuels Council

(1) The chairperson of the Commission shall, consistent with the Federal Advisory Committee Act, establish a United States Alternative Fuels Council to report to the Commission about matters related to alternative fuels.

(2) The Council shall be composed of members as follows:

(A) one Member of the House of Representatives appointed by the Speaker of the House of Representatives;

(B) one Member of the House of Representatives appointed by the Minority Leader of the House of Representatives;

(C) one Member of the Senate appointed by the Majority Leader of the Senate;

(D) one Member of the Senate appointed by the Minority Leader of the Senate; and

(E) 16 persons from the private sector or from State or local government who are knowledgeable about alternative fuels and their possible uses and the production of alternative fuels and vehicles powered by such fuels, to be appointed by the chairperson of the Commission.

(3) The Council shall meet at the call of the chairperson of the Commission.

(f) Detail of Federal personnel

Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section.

(g) Reports

(1) The Commission shall, not later than September 30 of each of the years 1990 and 1991, submit an interim report to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, setting forth the actions taken by the Commission under this section.

(2) The Commission shall, not later than September 30, 1992, submit a final report to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, setting forth the actions taken by the Commission under this section.

(h) Termination

The Commission and the Council shall terminate upon submission of the final report of the Commission under subsection (g)(2) of this section.

(i) Definitions

For purposes of this section—

(1) the term ''Commission'' means the Interagency Commission on Alternative Motor Fuels established in subsection (a) of this section; and

(2) the term ''Council'' means the United States Alternative Fuels Council established under subsection (e)(1) of this section.

(Pub. L. 94–163, title III, § 400DD, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2445; amended Pub. L. 102–486, title IV, § 402(2), (3), Oct. 24, 1992, 106 Stat. 2876.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–486 substituted ''alternative fuels'' for ''alternative motor fuels'' in pars. (1), (3), and (4) and ''alternative fuels'' for ''alcohols, natural gas, and other potential alternative motor fuels'' in par. (2).

Subsec. (e). Pub. L. 102–486, § 402(3), substituted ''alternative fuels'' for ''alternative motor fuels'' in par. (1) and in two places in par. (2)(E).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce

of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 6374d. Studies and reports

(a) Methanol study

(1) The Secretary shall study methanol plants, including the costs and practicability of such plants, that are—

(A) capable of utilizing current domestic supplies of unutilized natural gas;

(B) relocatable; or

(C) suitable for natural gas to methanol conversion by natural gas distribution companies.

(2) For purposes of this subsection, the term ''unutilized natural gas'' means gas that is available in small remote fields and cannot be economically transported to natural gas pipelines, or gas the quality of which is so poor that extensive and uneconomic pretreatment is required prior to its introduction into the natural gas distribution system.

(3) The Secretary shall submit a report under this subsection to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, no later than September 30, 1990.

(b) Independent environmental study

(1) The Administrator of the Environmental Protection Agency shall submit to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, in December of 1990, and once every two years thereafter, a report which includes—

(A) a comprehensive analysis of the air quality, global climate change, and other positive and negative environmental impacts, if any, including fuel displacement effects, associated with the production, storage, distribution, and use of all alternative motor vehicle fuels under this part, as compared to gasoline and diesel fuels; and

(B) an extended reasonable forecast of the change, if any, in air quality, global climate change, and other environmental effects of producing, storing, distributing, and using alternative motor vehicle fuels, utilizing such reasonable energy security, policy, economic, and other scenarios as may be appropriate.

(2) In carrying out the study under this subsection, the Administrator of the Environmental Protection Agency shall consult with the Secretaries of Energy and Transportation. Nothing in this paragraph shall be construed to require such Administrator to obtain the approval of the Secretary of Energy or the Secretary of Transportation for any actions taken under this subsection.

(3) There are authorized to be appropriated to carry out the purposes of this subsection $500,000.

(c) Public participation

Adequate opportunity shall be provided for public comment on the reports required by this section before they are submitted to the Congress, and a summary of such comments shall be attached to such reports.

(Pub. L. 94–163, title III, § 400EE, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2447.)

REFERENCES IN TEXT

This part, referred to in subsec. (b)(1)(A), was in the original ''the Alternative Motor Fuels Act of 1988'', Pub. L. 100–494, Oct. 14, 1988, 102 Stat. 2441, which is classified principally to this part. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 6201 of this title and Tables.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SUBCHAPTER IV—GENERAL PROVISIONS

PART A—ENERGY DATA BASE AND ENERGY INFORMATION

§ 6381. Verification examinations

(a) Authority of Comptroller General

The Comptroller General may conduct verification examinations with respect to the books, records, papers, or other documents of—

(1) any person who is required to submit energy information to the Secretary, the Department of the Interior, or the Federal Energy Regulatory Commission pursuant to any rule, regulation, order, or other legal process of such Secretary, Department or Commission;

(2) any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources—

(A) if such person has furnished, directly or indirectly, energy information (without regard to whether such information was furnished pursuant to legal requirements) to any Federal agency (other than the Internal Revenue Service), and

(B) if the Comptroller General of the United States determines that such information has been or is being used or taken into consideration, in whole or in part, by a Federal agency in carrying out responsibilities committed to such agency; or

(3) any vertically integrated petroleum company with respect to financial information of such company related to energy resource exploration, development, and production and the transportation, refining and marketing of energy resources and energy products.

(b) Request for examination

The Comptroller General shall conduct verification examinations of any person or company described in subsection (a) of this section, if requested to do so by any duly established committee of the Congress having legislative or oversight responsibilities under the rules of the House of Representatives or of the Senate, with respect to energy matters or any of the laws administered by the Department of the Interior (or the Secretary thereof), the Federal Energy Regulatory Commission, or the Secretary.

(c) Definitions

For the purposes of this subchapter—

(1) The term ''verification examination'' means an examination of such books, records, papers, or other documents of a person or company as the Comptroller General determines necessary and appropriate to assess the accuracy, reliability, and adequacy of the energy information, or financial information, referred to in subsection (a) of this section.

(2) The term ''energy information'' has the same meaning as such term has in section 796(e)(1) of title 15.

(3) The term ''person'' has the same meaning as such term has in section 796(e)(2) of title 15.

(4) The term ''vertically integrated petroleum company'' means any person which itself, or through a person which is controlled by, controls, or is under common control with such person, is engaged in the production, refining, and marketing of petroleum products.

(Pub. L. 94–163, title V, § 501, Dec. 22, 1975, 89 Stat. 956; Pub. L. 95–91, title III, § 301, title IV, § 402, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–619 purported to substitute ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration. See Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''Secretary, the Department of the Interior, or the Federal Energy Regulatory Commission'' and ''Secretary'' substituted for ''Federal Energy Administration, the Department of the Interior, or the Federal Power Commission'' and ''Administration'', respectively, in subsec. (a)(1), and ''Federal Energy Regulatory Commission, or the Secretary'' substituted for ''Federal Power Commission, or the Federal Energy Administration (or the Administrator)'' in subsec. (b) pursuant to sections 301, 402, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7172, 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy and terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6299, 6382 of this title.

§ 6382. Powers and duties of Comptroller General

(a) Subpenas; discovery and inspection; oaths; search

For the purpose of carrying out his authority under section 6381 of this title—

(1) the Comptroller General may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, to submit books, records, papers, or other documents, or to submit any other information or reports, and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Comptroller General may determine; and

(C) administer oaths.

(2) the Comptroller General, or any officer or employee duly designated by the Comptroller General, upon presenting appropriate credentials and a written notice from the Comptroller General to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any energy information, or any financial information in the case of a vertically integrated petroleum company.

(b) Information in possession of Federal agencies

The Comptroller General shall have access to any energy information within the possession of any Federal agency (other than the Internal Revenue Service) as is necessary to carry out his authority under this section.

(c) Transmission of examination results to Federal agencies

(1) Except as provided in subsections (d) and (e) of this section, the Comptroller General shall transmit a copy of the results of any verification examination conducted under section 6381 of this title to the Federal agency to which energy information which was subject to such examination was furnished.

(2) Any report made pursuant to paragraph (1) shall include the Comptroller General's findings with respect to the accuracy, reliability, and adequacy of the energy information which was the subject of such examination.

(d) Report to Congressional committees

If the verification examination was conducted at the request of any committee of the Congress, the Comptroller General shall report his findings as to the accuracy, reliability, or adequacy of the energy information which was the subject of such examination, or financial information in the case of a vertically integrated petroleum company, directly to such committee of the Congress and any such information obtained and such report shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of the committee and the rules of the House of Representatives or the Senate and as permitted by law.

(e) Disclosure of geological or geophysical information

(1) Any information obtained by the Comptroller General or any officer or employee of the General Accounting Office pursuant to the exercise of responsibilities or authorities under this section which relates to geological or geophysical information, or any estimate or interpretation thereof, the disclosure of which would result in significant competitive disadvantage or significant loss to the owner thereof shall not be disclosed except to a committee of Congress.

Any such information so furnished to a committee of the Congress shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of the committee and the rules of the House of Representatives or the Senate and as permitted by law.

(2) Any person who knowingly discloses information in violation of paragraph (1) shall be subject to the penalties specified in section 754(a)(3)(B) and (4)[1] of title 15.

(f) Reports to Congress

The Comptroller General shall prepare and submit to the Congress an annual report with respect to the exercise of its authorities under this part, which report shall specifically identify any deficiencies in energy information or financial information reviewed by the Comptroller General and include a discussion of action taken by the person or company so examined, if any, to correct any such deficiencies.

(Pub. L. 94–163, title V, § 502, Dec. 22, 1975, 89 Stat. 957.)

REFERENCES IN TEXT

Section 754 of title 15, referred to in subsec. (e)(2), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6384 of this title.

§ 6383. Accounting practices

(a) Development by Securities and Exchange Commission; time of taking effect

For purposes of developing a reliable energy data base related to the production of crude oil and natural gas, the Securities and Exchange Commission shall take such steps as may be necessary to assure the development and observance of accounting practices to be followed in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States. Such practices shall be developed not later than 24 months after December 22, 1975, and shall take effect with respect to the fiscal year of each such person which begins 3 months after the date on which such practices are prescribed or made effective under the authority of subsection (b)(2) of this section.

(b) Consultation with Secretary, General Accounting Office and Federal Energy Regulatory Commission; rules; reliance on practices developed by Financial Accounting Standards Board; opportunity to submit written comment

In carrying out its responsibilities under subsection (a) of this section, the Securities and Exchange Commission shall—

(1) consult with the Secretary, the General Accounting Office, and the Federal Energy Regulatory Commission with respect to accounting practices to be developed under subsection (a) of this section, and

(2) have authority to prescribe rules applicable to persons engaged in the production of crude oil or natural gas, or make effective by recognition, or by other appropriate means indicating a determination to rely on, accounting practices developed by the Financial Accounting Standards Board, if the Securities and Exchange Commission is assured that such practice will be observed by persons engaged in the production of crude oil or natural gas to the same extent as would result if the Securities and Exchange Commission had prescribed such practices by rule.

The Securities and Exchange Commission shall afford interested persons an opportunity to submit written comments with respect to whether it should exercise its discretion to recognize or otherwise rely on such accounting practice in lieu of prescribing such practices by rule and may extend the 24-month period referred to in subsection (a) of this section as it determines may be necessary to allow for a meaningful comment period with repect[1] to such determination.

(c) Requirements for accounting practices

The Securities and Exchange Commission shall assure that accounting practices developed pursuant to this section, to the greatest extent practicable, permit the compilation, treating domestic and foreign operations as separate categories, of an energy data base consisting of:

(1) The separate calculation of capital, revenue, and operating cost information pertaining to—

(A) prospecting,

(B) acquisition,

(C) exploration,

(D) development, and

(E) production,

including geological and geophysical costs, carrying costs, unsuccessful exploratory drilling costs, intangible drilling and development costs on productive wells, the cost of unsuccessful development wells, and the cost of acquiring oil and gas reserves by means other than development. Any such calculation shall take into account disposition of capitalized costs, contractual arrangements involving special conveyance of rights and joint operations, differences between book and tax income, and prices used in the transfer of products or other assets from one person to any other person, including a person controlled by[2] controlling[2] or under common control with such person.

(2) The full presentation of the financial information of persons engaged in the production of crude oil or natural gas, including—

(A) disclosure of reserves and operating activities, both domestic and foreign, to facilitate evaluation of financial effort and result; and

(B) classification of financial information by function to facilitate correlation with reserve and operating statistics, both domestic and foreign.

(3) Such other information, projections, and relationships of collected data as shall be nec-

[1] See References in Text note below.

[1] So in original. Probably should be ''respect''.

[2] So in original. Probably should be followed by a comma.

essary to facilitate the compilation of such data base.

(Pub. L. 94–163, title V, § 503, Dec. 22, 1975, 89 Stat. 958; Pub. L. 95–91, title III, § 301, title IV, § 402, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607.)

TRANSFER OF FUNCTIONS

''Secretary, the General Accounting Office, and the Federal Energy Regulatory Commission'' substituted for ''Federal Energy Administration, the General Accounting Office, and the Federal Power Commission'' in subsec. (b)(1) pursuant to sections 301, 402, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7172, 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions (with certain exceptions) to Secretary of Energy and terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 796.

§ 6384. Enforcement

(a) Civil penalties

Any person who violates any general or special order of the Comptroller General issued under section 6382(a)(1)(B) of this title may be assessed a civil penalty not to exceed $10,000 for each violation. Each day of failure to comply with such an order shall be deemed a separate violation. Such penalty shall be assessed by the Comptroller General and collected in a civil action brought by the Comptroller General through any attorney employed by the General Accounting Office or any other attorney designated by the Comptroller General, or, upon request of the Comptroller General, the Attorney General. A person shall not be liable with respect to any period during which the effectiveness of the order with respect to such person was stayed.

(b) Jurisdiction; process

Any action to enjoin or set aside an order issued under section 6382(a)(1)(B) of this title may be brought only before the United States Court of Appeals for the District of Columbia. Any action to collect a civil penalty for violation of any general or special order may be brought only in the United States District Court for the District of Columbia. In any action brought under subsection (a) of this section to collect a civil penalty, process may be served in any judicial district of the United States.

(c) Securing compliance with subpena

Upon petition by the Comptroller General through any attorney employed by the General Accounting Office or designated by the Comptroller General, or, upon request of the Comptroller General, the Attorney General, any United States district court within the jurisdiction of which any inquiry under this part is carried on may, in the case of refusal to obey a subpena of the Comptroller General issued under this part, issue an order requiring compliance therewith; and any failure to obey the order of the court may be treated by the court as a contempt thereof.

(Pub. L. 94–163, title V, § 504, Dec. 22, 1975, 89 Stat. 959.)

§ 6385. Petroleum product information

The President or his delegate shall, pursuant to authority otherwise available to the President or his delegate under any other provision of law, collect information on the pricing, supply, and distribution of petroleum products by product category at the wholesale and retail levels, on a State-by-State basis, which was collected as of September 1, 1981, by the Energy Information Administration.

(Pub. L. 94–163, title V, § 507, as added Pub. L. 97–229, § 5(a), Aug. 3, 1982, 96 Stat. 252.)

PART B—GENERAL PROVISIONS

§ 6391. Prohibited actions

(a) Unreasonable classifications and differentiations

Action taken under the authorities to which this section applies, resulting in the allocation of petroleum products or electrical energy among classes of users or resulting in restrictions on use of petroleum products and electrical energy shall not be based upon unreasonable classifications of, or unreasonable differentiations between, classes of users. In making any such allocation the President, or any agency of the United States to which such authority is delegated, shall give consideration to the need to foster reciprocal and nondiscriminatory treatment by foreign countries of United States citizens engaged in commerce in those countries.

(b) Unreasonably disproportionate share of burdens between segments of business community

To the maximum extent practicable, any restriction under authorities to which this section applies on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably disproportionate share of such burden on any specific class of industry, business, or commercial enterprise, or on any individual segment thereof. In prescribing any such restriction, due consideration shall be given to the needs of commercial, retail, and service establishments whose normal function is to supply goods or services of an essential convenience nature during times of day other than conventional daytime working hours.

(c) Authorities to which section applies

This section applies to actions under any of the following authorities:

(1) subchapters I and II of this chapter.

(2) this subchapter.

(3) the Emergency Petroleum Allocation Act of 1973[1] [15 U.S.C. 751 et seq.].

(Pub. L. 94–163, title V, § 521, Dec. 22, 1975, 89 Stat. 960.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (c)(3), is Pub. L. 93–159, Nov. 27, 1973,

[1] See References in Text note below.

87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6392. Conflicts of interest

(a) Filing of written statements covering known financial interests

Each officer or employee of the Secretary or of the Department of the Interior who—

(1) performs any function or duty under this chapter; and

(2) has any known financial interest—

(A) in any person engaged in the business of exploring, developing, producing, refining, transporting by pipeline, or distributing (other than at the retail level) coal, natural gas, or petroleum products, or

(B) in property from which coal, natural gas, or crude oil is commercially produced;

shall, beginning on February 1, 1977, annually file with the Secretary or the Secretary of the Interior, as the case may be, a written statement disclosing all such interests held by such officer or employee during the preceding calendar year. Such statement shall be subject to examination, and available for copying, by the public upon request.

(b) Enforcement and monitoring of filing requirements; report to Congress

The Secretary and the Secretary of the Interior shall each—

(1) act, within 90 days after December 22, 1975, in accordance with section 553 of title 5—

(A) to define the term ''known financial interest'' for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary or the Secretary of the Interior, as the case may be, of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption

In the rules prescribed in subsection (b) of this section, the Secretary and the Secretary of the Interior each may identify specific positions, or classes thereof within the Federal Energy Administration or Department of the Interior, as the case may be, which are of a nonregulatory and nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty

Any officer or employee who is subject to, and knowingly violates, subsection (a) of this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 94–163, title V, § 522, Dec. 22, 1975, 89 Stat. 961; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1978—Subsecs. (a) to (c). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted for ''Federal Energy Administration'' in subsec. (a) pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions (with certain exceptions) to Secretary of Energy.

§ 6393. Administrative procedure and judicial review

(a)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule, regulation, or order having the applicability and effect of a rule as defined in section 551(4) of title 5 issued under subchapter I of this chapter (other than section 6212 of this title) and subchapter II of this chapter, or this subchapter.

(2)(A) Notice of any proposed rule, regulation, or order described in paragraph (1) which is substantive and of general applicability shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of 30 days following the date of such publication and prior to the effective date of the rule shall be provided for opportunity to comment; except that the 30-day period for opportunity to comment prior to the effective date of the rule may be—

(i) reduced to no less than 10 days if the President finds that strict compliance would seriously impair the operation of the program to which such rule, regulation, or order relates and such findings are set out in such rule, regulation, or order, or

(ii) waived entirely, if the President finds that such waiver is necessary to act expeditiously during an emergency affecting the national security of the United States.

(B) Public notice of any rule, regulation, or order which is substantive and of general applicability which is promulgated by officers of a State or political subdivision thereof or to State or local boards which have been delegated authority pursuant to subchapter I or II of this chapter or this subchapter shall, to the maximum extent practicable, be achieved by publication of such rules, regulations, or orders in a sufficient number of newspapers of general cir-

culation calculated to receive widest practicable notice.

(3) In addition to the requirements of paragraph (2) and to the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded and such opportunity shall be afforded prior to the effective date of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than 45 days, and no later than 10 days (in the case of a waiver of the entire comment period under paragraph (2) (ii)), after such date. A transcript shall be made of any oral presentation.

(4) Any officer or agency authorized to issue rules, regulations, or orders described in paragraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this chapter as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens and shall in rules prescribed by it establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules, regulations and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with subsection (b) of this section or other applicable law when such denial becomes final. The officer or agency shall, by rule, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

(b) The procedures for judicial review established by section 211 of the Economic Stabilization Act of 1970 shall apply to proceedings to which subsection (a) of this section applies, as if such proceedings took place under such Act. Such procedures for judicial review shall apply notwithstanding the expiration of the Economic Stabilization Act of 1970.

(c) Any agency authorized to issue any rule, regulation, or order described in subsection (a)(1) of this section shall, upon written request of any person, which request is filed after any grant or denial of a request for exception or exemption from any such rule, regulation, or order, furnish such person, within 30 days after the date on which such request is filed, with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial.

(Pub. L. 94–163, title V, § 523, Dec. 22, 1975, 89 Stat. 962.)

REFERENCES IN TEXT

The Economic Stabilization Act of 1970, referred to in subsec. (b), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, as amended, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

CODIFICATION

Words ''(other than any provision of such titles which amends another law)'', appearing in the original at the end of subsec. (a), have been omitted as unnecessary. Such titles meant titles I, II, and V of Pub. L. 94–163, which titles are classified to subchapters I, II, and V of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I, II, and V of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 6241 of this title; title 15 section 2841; title 28 section 1295.

§ 6394. Prohibited acts

It shall be unlawful for any person—

(1) to violate any provision of subchapter I or subchapter II of this chapter or this subchapter,

(2) to violate any rule, regulation, or order issued pursuant to any such provision or any provision of section 6363 of this title; or

(3) to fail to comply with any provision prescribed in, or pursuant to, an energy conservation contingency plan which is in effect.

(Pub. L. 94–163, title V, § 524, Dec. 22, 1975, 89 Stat. 963.)

CODIFICATION

Words ''(other than any provision of such titles which amends another law)'', appearing in the original at the end of par. (1), have been omitted as unnecessary. Such titles meant titles I, II, and V of Pub. L. 94–163, which titles are classified to subchapters I, II, and V of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I, II, and V of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6395. Enforcement

(a) Civil penalty

Whoever violates section 6394 of this title shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) Penalty for willful violation

Whoever willfully violates section 6394 of this title shall be fined not more than $10,000 for each violation.

(c) Penalty for violation after having been subjected to civil penalty for prior violation

Any person who knowingly and willfully violates section 6394 of this title with respect to the sale, offer of sale, or distribution in commerce of a product or commodity after having been subjected to a civil penalty for a prior violation of section 6394 of this title with respect to the sale, offer of sale, or distribution in commerce of such product or commodity shall be fined not more than $50,000 or imprisoned not more than 6 months, or both.

(d) Injunction action by Attorney General

Whenever it appears to any officer or agency of the United States in whom is vested, or to whom is delegated, authority under this chapter that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 6394 of this title, such officer or agency may request the Attorney General to bring an action in an appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory

injunctions commanding any person to comply with any rule, regulation, or order described in section 6394 of this title.

(e) Private right of action

(1) Any person suffering legal wrong because of any act or practice arising out of any violation of any provision of this chapter described in paragraph (2), may bring an action in an appropriate district court of the United States without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

(2) The provisions of this chapter referred to in paragraph (1) are as follows:

(A) Section 6262[1] of this title (relating to energy conservation plans).

(B) Section 6271 of this title (relating to international oil allocation).

(C) Section 6272 of this title (relating to international voluntary agreements).

(D) Section 6273 of this title (relating to advisory committees).

(E) Section 6274 of this title (relating to international exchange of information).

(F) Section 6391 of this title (relating to prohibition on certain actions).

(Pub. L. 94–163, title V, § 525, Dec. 22, 1975, 89 Stat. 963.)

REFERENCES IN TEXT

Section 6262 of this title, referred to in subsec. (e)(2)(A), was omitted from the Code pursuant to section 6264 of this title, which provided for expiration of authority under that section on June 30, 1985.

§ 6396. State laws or programs

No State law or State program in effect on December 22, 1975, or which may become effective thereafter, shall be superseded by any provision of subchapter I or II of this chapter or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with such provision, rule, regulation, or order.

(Pub. L. 94–163, title V, § 526, Dec. 22, 1975, 89 Stat. 964.)

CODIFICATION

Words ''(other than any provision of such title which amends another law)'', appearing in the original in this section, have been omitted as unnecessary. Such title meant title I or title II of Pub. L. 94–163, which titles are classified to subchapters I and II of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I and II of this chapter.

§ 6397. Repealed. Pub. L. 95–619, title VI, § 691(b)(1), Nov. 9, 1978, 92 Stat. 3288

Section, Pub. L. 94–163, title V, § 527, Dec. 22, 1975, 89 Stat. 964, related to transfer of authority on termination of Federal Energy Administration.

§ 6398. Authorization of appropriations

Any authorization of appropriations in this Act, or in any amendment to any other law made by this Act, for the fiscal year 1976 shall be deemed to include an additional authorization of appropriations for the period beginning July 1, 1976, and ending September 30, 1976, in amounts which equal one-fourth of any amount authorized for fiscal year 1976, unless appropriations for the same purpose are specifically authorized in a law hereinafter enacted.

(Pub. L. 94–163, title V, § 528, Dec. 22, 1975, 89 Stat. 964.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act, which is classified principally to this chapter (§ 6201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 6399. Intrastate natural gas

No provision of this chapter shall permit the imposition of any price controls on, or require any allocation of, natural gas not subject to the jurisdiction of the Secretary or the Federal Energy Regulatory Commission.

(Pub. L. 94–163, title V, § 529, Dec. 22, 1975, 89 Stat. 964; Pub. L. 95–91, title III, § 301(a), title IV, § 402, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607.)

TRANSFER OF FUNCTIONS

''Secretary or the Federal Energy Regulatory Commission'' substituted for ''Federal Power Commission'' pursuant to sections 301(a), 402, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7172, 7293, and 7297 of this title and which terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

§ 6400. Limitation on loan guarantees

Loan guarantees and obligation guarantees under this Act or any amendment to another law made by this Act may not be issued in violation of any limitation in appropriations or other Acts, with respect to the amounts of outstanding obligational authority.

(Pub. L. 94–163, title V, § 530, Dec. 22, 1975, 89 Stat. 964.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act, which is classified principally to this chapter (§ 6201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 6401. Repealed. Pub. L. 99–58, title I, § 104(c)(3), July 2, 1985, 99 Stat. 105

Section, Pub. L. 94–163, title V, § 531, Dec. 22, 1975, 89 Stat. 965, provided for the expiration of all authority under subchapters I and II of this chapter at midnight June 30, 1985. See sections 6251 and 6285 of this title.

PART C—CONGRESSIONAL REVIEW

§ 6421. Procedure for Congressional review of Presidential requests to implement certain authorities

(a) "Energy action" defined

For purposes of this section, the term ''energy action'' means any matter required to be trans-

[1] See References in Text note below.

mitted, or submitted to the Congress in accordance with the procedures of this section.

(b) Transmittal of energy action to Congress

The President shall transmit any energy action (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any energy action is received by the appropriate officers of each House, for purposes of this section such energy action shall be deemed to have been transmitted on the first succeeding day on which both Houses are in session.

(c) Effective date of energy action

(1) Except as provided in paragraph (2) of this subsection, if energy action is transmitted to the Houses of Congress, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such action is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such action.

(2) An energy action described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such action.

(d) Computation of period

For the purpose of subsection (c) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(e) Provision in energy action for later effective date

Under provisions contained in an energy action, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

(f) Resolutions with respect to energy action

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term ''resolution'' means only a resolution of either House of Congress described in subparagraph (A) or (B) of this paragraph.

(A) A resolution the matter after the resolving clause of which is as follows: ''That the _____ does not object to the energy action numbered _____ submitted to the Congress on _____, 19___.'', the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy action.

(B) A resolution the matter after the resolving clause of which is as follows: ''That the _____ does not favor the energy action numbered _____ transmitted to Congress on _____, 19___.'', the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

(3) A resolution once introduced with respect to an energy action shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy action which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An

amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(i) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(B) of this subsection with respect to the same such action, or

(ii) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy action, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

(Pub. L. 94–163, title V, § 551, Dec. 22, 1975, 89 Stat. 965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6234, 6239, 7172, 8374, 10222 of this title; title 49 section 32902.

§ 6422. Expedited procedure for Congressional consideration of certain authorities

(a) Contingency plan identification number; transmittal of plan to Congress

Any contingency plan transmitted to the Congress pursuant to section 6261(a)(1)[1] of this title shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(b) Necessity of Congressional resolution within certain period for plan to be considered approved

(1) No such energy conservation contingency plan may be considered approved for purposes of section 6261(b)[1] of this title unless between the date of transmittal and the end of the first period of 60 calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in subsection (d)(2)(A) of this section.

(2)(A) Subject to subparagraph (B), any such rationing contingency plan shall be considered approved for purposes of section 6261(d)[1] of this title only if such plan is not disapproved by a resolution described in subsection (d)(2)(B)(i) of this section which passes each House of the Congress during the 30-calendar-day period of continuous session after the plan is transmitted to such Houses and which thereafter becomes law.

(B) A rationing contingency plan may be considered approved prior to the expiration of the 30-calendar-day period after such plan is transmitted if a resolution described in subsection (d)(2)(B)(ii) of this section is passed by each House of the Congress and thereafter becomes law.

(c) Computation of period

For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the calendar-day period involved.

(d) Resolution with respect to contingency plan

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2)(A) For purposes of applying this section with respect to any energy conservation contingency plan, the term ''resolution'' means only a resolution of either House of Congress the matter after the resolving clauses of which is as follows: ''That the _____ approves the energy conservation contingency plan numbered _____ submitted to the Congress on _____, 19____.'', the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy conservation contingency plan.

(B) For purposes of applying this subsection with respect to any rationing contingency plan (other than pursuant to section 6261(d)(2)(B)[1] of this title), the term ''resolution'' means only a joint resolution described in clause (i) or (ii) of this subparagraph with respect to such plan.

(i) A joint resolution of either House of the Congress (I) which is entitled: ''Joint resolution relating to a rationing contingency plan.'', (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: ''That the Congress of the United States disapproves the rationing contingency plan transmitted to the Congress on

[1] See References in Text note below.

_____, 19____.'', the blank spaces therein appropriately filled.

(ii) A joint resolution of either House of the Congress (I) which is entitled: ''Joint resolution relating to a rationing contingency plan.'', (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: ''That the Congress of the United States does not object to the rationing contingency plan transmitted to the Congress on _____, 19____.'', the blank spaces therein appropriately filled.

(3) A resolution once introduced with respect to a contingency plan shall immediately be referred to a committee (and all resolutions with respect to the same contingency plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a contingency plan has been referred has not reported it at the end of 20 calendar days after its referral in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such contingency plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same contingency plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. Except to the extent provided in paragraph (7)(A), an amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same contingency plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the notion[2] shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. Except to the extent provided in paragraph (7)(B), an amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(7) With respect to any rationing contingency plan—

(A) In the consideration of any motion to discharge any committee from further consideration of any resolution on any such plan, it shall be in order after debate allowed for under paragraph (4)(B) to offer an amendment in the nature of a substitute for such motion—

(i) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable. Debate on such an amendment shall be limited to not more than 1 hour, which shall be divided equally between those favoring and those opposing the amendment.

(B) In the consideration of any resolution on any such plan which has been reported by a committee, it shall be in order at any time during the debate allowed for under paragraph (5)(B) to offer an amendment in the nature of a substitute for such resolution—

(i) consisting of the text of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of the text of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable.

(C) If one House receives from the other House a resolution with respect to a rationing contingency plan, then the following procedure applies:

[2] So in original. Probably should be ''motion''.

(i) the resolution of the other House with respect to such plan shall not be referred to a committee;

(ii) in the case of a resolution of the first House with respect to such plan—

(I) the procedure with respect to that or other resolutions of such House with respect to such plan shall be the same as if no resolution from the other House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the first House with respect to such plan a resolution from the other House with respect to such plan which has the same effect shall be automatically substituted for the resolution of the first House.

(D) Notwithstanding any of the preceding provisions of this subsection, if a House has approved a resolution with respect to a rationing contingency plan, then it shall not be in order to consider in that House any other resolution under this section with respect to the approval of such plan.

(Pub. L. 94–163, title V, § 552, Dec. 22, 1975, 89 Stat. 967; Pub. L. 96–102, title I, §§ 103(b)(2), 105(a)(4), (b)(6), Nov. 5, 1979, 93 Stat. 753, 756.)

REFERENCES IN TEXT

Section 6261 of this title, referred to in subsecs. (a), (b)(1), (2)(A), and (d)(2)(B), was omitted from the Code pursuant to section 6264 of this title, which provided for expiration of authority under that section on June 30, 1985.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–102, §§ 103(b)(2)(A), 105(b)(6), designated existing provisions as par. (1) and substituted ''No such energy conservation contingency plan'' for ''No such contingency plan'', ''section 6261(b)'' for ''section 6261(a)(2)'', and ''subsection (d)(2)(A)'' for ''subsection (d)(2)'', and added par. (2).

Subsec. (c)(2). Pub. L. 96–102, § 103(b)(2)(B), substituted ''calendar-day period involved'' for ''60-calendar-day period''.

Subsec. (d)(2). Pub. L. 96–102, §§ 103(b)(2)(C), 105(a)(4), designated existing provisions as subpar. (A), substituted ''For purposes of applying this section with respect to any energy conservation contingency plan'' for ''For purposes of this subsection'' and ''energy conservation contingency plan'' for ''contingency plan'' in two places, and added subpar. (B).

Subsec. (d)(4)(A). Pub. L. 96–102, § 103(b)(2)(D), inserted ''in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan'' after ''after its referral''.

Subsec. (d)(4)(B). Pub. L. 96–102, § 103(b)(2)(E), substituted ''Except to the extent provided in paragraph (7)(A), an amendment'' for ''An amendment''.

Subsec. (d)(5)(B). Pub. L. 96–102, § 103(b)(2)(F), substituted ''Except to the extent provided in paragraph (7)(B), an amendment'' for ''An amendment''.

Subsec. (d)(7). Pub. L. 96–102, § 103(b)(2)(G), added par. (7).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–102 effective Nov. 5, 1979, see section 302 of Pub. L. 96–102, set out as an Effective Date note under section 8501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2841.

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

Sec.

§ 6501. "Petroleum" defined

As used in this chapter, the term ''petroleum'' includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

(Pub. L. 94–258, title I, § 101, Apr. 5, 1976, 90 Stat. 303.)

SHORT TITLE

Section 1 of Pub. L. 94–258 provided: ''That this Act [enacting this chapter and section 7420 of Title 10,